



Tracking Equality at Work

Literature review

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Published in June 2011 by the New Zealand Human Rights Commission

www.hrc.co.nz

Wellington, New Zealand.

The Tracking Equality at Work website: www.neon.org.nz/trackingequalityatwork/

ISBN 978-0-478-35601-4 (online)

Executive summary

Introduction

For close to 40 years there has been equality at work and anti-discrimination legislation. Discrimination at work is now generally accepted to be unfair, unethical and bad for business. Despite the legislation, inequality and discrimination at work continue to exist in New Zealand and overseas.

International trends in frameworks for equality at work

This paper summarises key international trends in equality frameworks, with a focus on English-speaking nations. Themes include:

- *Equal employment opportunities (EEO)* has two components: a positive duty to promote diversity at work; and preventing discrimination. Despite some major success stories, inequalities remain and appear to be entrenched. In particular, vulnerable groups such as women, Māori, Pacific peoples, other ethnic minorities and persons with disabilities have not yet achieved equality in the workforce. Both young people and older people experience discrimination and lack of opportunities in the workplace. The resolution of individual discrimination cases can only play a small part in addressing systemic inequalities.
- *Promoting equal pay* – this includes improving the effectiveness of equal pay legislation and legislating in favour of equal pay for work of equal value (pay equity). Most developed nations, including the UK, Australia and some provinces of Canada, now have pay equity legislation.
- *Fairness, special treatment and positive action.* Not all equal treatment is fair, and not all unequal treatment is unfair. Fair treatment can include special measures to overcome a disadvantage. In New Zealand special measures (positive action) are permissible under the Human Rights Act if persons or groups need assistance or advancement in order to achieve an equal place with other members of the community. Under the current UK legislation, all employers may choose to preferentially appoint or promote target group members who are equally qualified if this increases diversity at work. Special treatment of disabled people and pregnant women to help them improve their work performance is not ruled to be discriminatory.
- *Equality at work for target groups and for all.* Whilst still protecting the target groups from discrimination, there is also a move in the UK towards 'equality for all'. For example, men are explicitly entitled to equal opportunities at work and equal rights in negotiating flexible working. Similar moves have been strongly recommended for Australia.
- *Transparency about pay and opportunities.* Lack of transparency about pay and criteria for progression makes equality and anti-discrimination difficult. There are now international moves towards greater transparency about pay and prospects.

- *Changes in the organisation of work.* The labour force has changed considerably in the past 40 years. Increasingly, employees want flexible work. Some unpaid carers can now request flexibility in their paid job. However, other groups of workers including fathers, younger employees and older workers may wish to work flexibly. The extension to all employees of the right to request flexible work is being considered in New Zealand. Under new UK legislation, flexible work can be requested by all employees. There are recommendations in Australia that eligibility to request flexible work be extended.

Can we make equality work?

Research shows that equality at work does not 'just happen'. It requires evidence-based policies that take into account what works best. Reviewing and amending the legislation, proper resourcing, education of employers and the public about the benefits of equality, monitoring, reporting and enforcement all play an important part in the success of equality-at-work policies. Governments have a vital role to play, not only in legislation, enforcement and education, but also as good employers, leading by example.

The business case for equality at work

Equal pay and equal opportunities benefit individual businesses and the whole economy. Businesses with diversity in their leadership groups have been found to be more resilient and better able to recruit and retain good staff. At the level of the whole economy in the UK equality is viewed as a huge investment, and increasing the employment and promotion opportunities of women and ethnic minorities is predicted to add billions of pounds to GDP.

Conclusions

Inequality and discrimination have been around for a long time. Sometimes it is hard to imagine what equality at work should look like. But in the meantime, the reality is financial hardship and loss of morale for many target group members. This will continue until fairer systems become the norm at work.

A new and updated equality-at-work framework will help New Zealand meet its international and domestic obligations. It will keep the country 'up to speed' with similar nations and competitors, which are already developing or upgrading their own equality frameworks, and which expect to reap the very considerable social and economic benefits.

Introduction

The last major Human Rights Commission equality-at-work document, *Framework for the Future* (Mintrom and True, 2004) was published seven years ago. The *National Conversation about Work* (2010) and the *Census of Women's Participation* (2010) made a number of recommendations for further progress towards equality.

New Zealand already has several pieces of legislation designed to promote equality in workplaces and prevent discrimination.¹ In addition New Zealand has signed and ratified a number of international treaties designed to promote equality at work².

New Zealand and similar nations have made some progress towards equality at work. This has included the right to request flexible work, breastfeeding breaks in workplaces and paid parental leave. New Zealand rates highly in the Global Gender Gap Report produced by the World Economic Forum and has made progress towards equal employment opportunities (EEO).

However, progress towards equal pay and opportunities has been uneven and sometimes stalled or even reversed in recent times (Human Rights Commission 2010c; Australian Government, 2009).

According to The Social Report 2010 (Ministry of Social Development, 2010), in New Zealand in June 2009, Europeans and people self-identifying as 'other' or 'New Zealander', had the highest median earnings, at \$20.00 an hour. The median hourly earnings of Māori were \$17.50 an hour, while Pacific peoples had the lowest earnings, at \$16.50 an hour. The median hourly wage was \$20.53 for all male employees and \$18.22 for all female employees (Ministry of Social Development, 2010).

No country has yet achieved complete equality at work³. However, some nations have developed or are developing more effective equality frameworks and are poised to reap the social and economic benefits that fairness and greater equality at work brings.

This paper reviews the current international trends in equality-at-work frameworks. As with the *Framework for the Future* (Mintrom and True, 2004), New Zealand's equality-at-work measures are benchmarked mainly against those of other English-speaking nations, especially Australia, the UK, Canada and USA.

¹ For example, the Equal Pay Act of 1972, the State Sector Act, 1988, the Human Rights Act 1993, including its amendments in 2000 and the Employment Relations Act, 2000.

² For example, New Zealand has ratified the International Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), and International Labour Organisation (ILO) Convention 100 on Equal Remuneration, under which women have the right to equal pay for the same or similar work (equal pay) and the right to equal pay for work of equal value (pay equity), and Convention 111 on Equal Employment Opportunity. In 2007 the UN General Assembly outlawed discrimination against indigenous people.

³ Very similar patterns by ethnicity and gender exist in other English-speaking nations. Disabled men and women also earn significantly less than non-disabled people.

International trends in frameworks for equality at work

Equal employment opportunities (EEO)

A positive duty to promote diversity at work.

The concept of equal opportunities was developed after World War II to allow women and ethnic minority groups to access a wider range of occupations. Equal Employment Opportunities (EEO) policies are practices that are intended to recognise and value the diverse skills and talents that people bring to work. In New Zealand, state sector employers have a duty to promote and report on EEO as part of their 'good employer' responsibilities.

Specifically, state sector employers are required to include provisions for the fair and proper treatment of employees in all aspects of their employment. These provisions include an impartial selection of suitably qualified persons for appointment; recognition of the aims and aspirations of Māori and the employment needs of Māori, and the need for involvement of Māori as employees of the entity; recognition of the aims and aspirations and employment requirements and the cultural differences of ethnic or minority groups; recognition of the employment requirements of women; and recognition of the employment requirements of persons with disabilities.⁴

Despite some major victories, progress has been slow. For example, in New Zealand today almost half of all women workers are employed in jobs that are at least 80 per cent female (Department of Labour, 2011). Māori and Pacific youth have much higher rates of unemployment than other groups, and people with disabilities are twice as likely to be unemployed as their non-disabled peers. The *National Conversation about Work* (Human Rights Commission, 2010) recommends that the Employment Relations Act (2000) be amended, to include a positive duty to be a good employer, in both the public and private sectors (Human Rights Commission, 2010).

Preventing discrimination

In New Zealand the Human Rights Act (1994) outlaws discrimination against target groups, including in the workplace. Discrimination may take the form of lower pay, fewer opportunities for progression, harassment or bullying. It also includes victimisation of people who are attempting to assert their right to equality at work, or who help others to do so.

⁴ See s118 Crown Entities Act 2004

Anti-discrimination legislation is designed to protect 'target groups' (sometimes known as protected groups) from discrimination, for example on the grounds of age (young or older workers), disability, ethnicity, family, marital or civil partnership status, pregnancy and maternity, religion or belief, sex, sexual orientation and transgender status.

Direct discrimination at work occurs if someone is denied a job, equal pay or opportunities for progression, on the grounds of prejudices or stereotypes about the EEO target group to which they belong. Direct discrimination has been unlawful in New Zealand for over 30 years, and for similar lengths of time in other English-speaking nations. However, direct discrimination continues to flourish when there is a lack of transparency, monitoring, reporting and enforcement.

Indirect discrimination occurs when work requirements appear to treat everyone equally but in practice disadvantage some groups. For example, requiring a Seventh Day Adventist to work on a Saturday is seen as indirect discrimination (New Zealand Human Rights Commission, 2003). Equally, failing to reasonably accommodate a person's family and caring responsibilities is a form of indirect discrimination (Australian Human Rights Commission, 2010; Equality and Human Rights Commission, 2010).

At present, much anti-discrimination legislation in New Zealand and Australia requires victims of discrimination to bring a complaint. Dispute resolution to mediate those complaints between the parties in the first instance with the aim of early, low-level resolution may however result in low visibility of systemic discrimination (Human Rights Commission, 2009).

In New Zealand the Human Rights Commission has the power to initiate an inquiry into systemic issues and has recently done this in relation to people with disabilities accessing public transport (The Accessible Journey, Human Rights Commission 2005) and an inquiry into the rights of transgender people (To Be Who I Am, Human Rights Commission, 2008).

In Australia there are proposals to empower the Sex Discrimination Commissioner to initiate investigations of alleged discrimination without individuals being required to bring a complaint (Australian Human Rights Commission, 2010).

In the UK the government proposes to take strong action where there is evidence of discrimination. Employers in all sectors are expected to be proactive and not wait for an action before ensuring that their pay systems are free of bias (Wild, 2010).

Equal Pay

Equal pay for work requiring similar levels of skill, knowledge, effort, responsibility and demand is a basic human right. It is also vital for economic wellbeing and good for business.

Equal pay is usually divided into two types: *equal pay for the same or substantially the same work*, and *equal pay for work of equal value*. New Zealand introduced equal pay for the same or similar work in the public sector in 1960, and the private sector in 1972, when other English-speaking nations were doing likewise. Initially the equal pay legislation had a significant positive impact. However, the Equal Pay Act has become ineffective since 1990, largely due to reductions in transparency about pay rates. Reviews under the Plan of Action for Women (2004–9) found that unequal pay for the same and similar work was common

(Department of Labour, 2009). Meanwhile, the UK has amended its equal-pay legislation several times since the 1980s to bring it closer to the higher standards set by the European Union.

Equal pay for work of equal value is also known as pay equity. Its main aim has been to eliminate the pay gap between male-dominated and female-dominated occupations⁵ that exists due to occupational segregation. Many developed nations already have legislation for equal pay for work of equal value – including Australia, UK, some provinces of Canada and all European Union member states.

Australia has had legislation that covers equal pay for work of equal value since 1972, but some states, notably New South Wales, have used the legislation more effectively than others. It has been recommended that the relevant agencies⁶ should be provided with the mandate and the resources to develop a National Pay Equity Strategy (Australian Human Rights Commission, 2010:4).

In Ontario, Canada, the *Pay Equity Act* requires that jobs be evaluated, and that work mostly done by women be compared to work mostly done by men. If the jobs are of comparable value, then female jobs must be paid at least the same as male jobs. The province of Saskatchewan also has pay equity provisions.

New Zealand has the Equal Pay Act 1972 but does not have legislation for pay equity, although it has signed and ratified a number of international instruments that state that there should be equal pay for work of equal value⁷. Pay equity reviews were conducted in the New Zealand public sector between 2004 and 2009 and these could usefully be extended to the private sector (Human Rights Commission 2010).

Unfortunately, women's efforts to move into male-dominated occupations and into management roles have not rewarded women with equal pay. It is now known that gender pay gaps are wider in male-dominated occupations and in management positions than in female-dominated occupations. For example, in Australia female CEOs earn only two thirds of the median wage of male CEOs and female chief financial officers and chief operating officers earn just half the median wage of their male equivalent (Australian Government, 2009). Effective equal pay and pay equity is needed at all levels, and within and between occupations.

The level of *minimum wages* also has an enormous effect on the standard of living and wellbeing of EEO target groups and increasing the minimum wage is a powerful tool for reducing inequality.

⁵ Female-dominated jobs include librarian, nurse, childcare worker or secretary. Male-dominated jobs include IT specialist, firefighter or police officer.

⁶ These are: the Equality for Women in the Workplace Agency, the Sex Discrimination Commissioner, the Australian Human Rights Commission and Fair Work Australia.

⁷ These include the International Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and ILO 100.

Fairness, special treatment and positive action

Not all equal treatment is fair, and not all unequal treatment is unfair. Fair treatment can include special help to overcome a disadvantage.

In New Zealand positive action is permissible under section 73 of the Human Rights Act 1993 if persons or groups need assistance or advancement to achieve an equal place with other members of the community. Traditionally, special measures or positive action have been employed in education, for example tertiary education scholarships for female or Māori students. However, positive action is controversial, and is viewed as discriminatory by some groups in society. For example, the phrase 'Kiwi vs Iwi' evoked reaction to positive action programmes designed to assist Māori, and quotas for political representation at local government or within political parties has not gained popular public support.

Under the UK Equality Act (2010) *special treatment* (more favourable treatment) of disabled people and pregnant women is deemed to be fair, not discriminatory. It aims to help disabled people and pregnant women participate more effectively at work.

Target groups are still under-represented in senior and leadership roles at work. Moving towards diversity at all levels can be glacially slow, but '*positive action*' can provide traction to the process of change. In the UK, from April 2011, when faced with a choice of equally qualified job applicants, employers will be allowed to prioritise members of under-represented target groups, in the interests of diversity (HM Government, 2010; Human Rights and Equality Commission, 2010).

Equality at work for target groups and for all

Human rights and anti-discrimination legislation normally identifies target groups (also known as protected groups) who on average earn less, occupy proportionately fewer positions of power and status and who may be more vulnerable to harassment at work or to unemployment. Until discrimination at work no longer occurs there will be a continuing need for protected status for some groups of people.

Disproportionate job losses amongst target groups

In New Zealand, Māori and Pacific people have experienced disproportionate job losses since the 2008 recession. Between the June 2008 and June 2010, the number of Māori in employment declined by 7.2%, while the number of Pacific people in employment declined by 8.7%. Total employment for all ethnicities only fell by 0.9% over the same period. This big fall in employment is not just because Māori work in industries hardest hit at times of recession. Māori workers have also been more likely to be laid off than non-Māori workers *within* industries (Department of Labour, 2010). Meanwhile, youth jobless rates (all ethnicities) have risen to 19.4%, the highest in 20 years (NEON, 2011).

Other vulnerable groups in English-speaking countries have been similarly affected. Unemployment for lone mothers in the USA reached 13.4% in July 2010. Afro-American and Hispanic Women were more severely affected than ethnic minority men (National Women's Law Center, 2010). In the UK, women account for more than three quarters of the fall in employment, and a 'female jobs recession' is under way (Human Resource Management, January 2011).

In the UK, the criteria used to select people for redundancy must not put disabled people at a disadvantage. Under the public sector equality duties, since 2007, public sector employers must ensure that decisions do not have a disproportionately negative effect on people from different ethnic groups, disabled people, and men and women (Equality and Human Rights Commission, 2009a and 2009b).

However, whilst still protecting the target groups there is also a move towards 'equality for all'. For example, in the UK there are now provisions for the right to request flexible work to be extended to all employees (HM Government, 2010). This is discussed in more detail in the section on the organisation of work below.

There are also moves towards equal opportunities for all to progress and protecting everyone from discrimination (HM Government, 2010). For example, if an employer approves a mother's request to work flexibly but refuses a father's request, because parenthood is presumed to be less important for a man, this is likely to be direct sex discrimination (Equality and Human Rights Commission, 2010). In Australia it has been recommended that there be constitutional reform to protect the principle of equality for all people (Australian Human Rights Commission, 2010).

Apart from Article 3 of the Treaty of Waitangi there is no reference in New Zealand law to equality, a fact that the United Nations Committee on Human Rights has consistently criticised in assessing New Zealand's compliance with international standards on equality and freedom from discrimination. In recent years a human rights approach to equality based on the idea of 'treatment as an equal, not equal treatment' has gained ascendancy. In 2009 the Human Rights Commission recommended to the Minister of Justice that an explicit reference to equality in the Human Rights Act 1993 and the Bill of Rights Act 1990 was necessary to ensure equal outcomes not just equal treatment.

Transparency about pay and opportunities

In New Zealand, for many decades the rates of pay in every occupation agreed in national awards were published. In the public sector, pay rates and the criteria for progression were also freely available. However, especially since 1990, there has been increasing secrecy about pay and progression. Some New Zealand employees, specifically many in the finance sector, are currently required to sign secrecy clauses, designed to prohibit them from discussing their pay, benefits or bonuses with others.

Lack of transparency about remuneration makes equal pay legislation unworkable. Members of target groups cannot bring a claim when they do not know whether workmates from more advantaged social groups are receiving higher salaries or bonuses. Often, new appointees are required to individually negotiate their pay without knowing what their workmates are paid. This leads to lower starting rates for members of disadvantaged groups in the workforce.⁸

⁸ This was found to be a common issue in the New Zealand public service in the pay and employment equity reviews (2004–9). For example, negotiated starting pay rates typically include matching the appointee's most recent salary. As members of target groups are already paid less on average, this tends to cement inequalities.

However, in many developed nations there is a trend towards making pay rates publicly available once again. For example, in the UK under the Equalities Act, 2010, secrecy clauses are now legally unenforceable. This means that companies may still legally have employees sign pay secrecy clauses in their contracts, but cannot enforce a breach of secrecy. It is also now illegal to victimise employees who request or make disclosures about pay in order to prevent discrimination.

Increasing transparency in public sectors

In the UK public sector organisations are required to publish more information than before about equality (HM Government 2010). In May 2010, public sector pay rates for the most senior staff were revealed, as part of a move towards greater transparency. A Public Sector Transparency Board has also been established. Large government-funded bodies will be expected to be transparent about the composition of their workforce and their pay rates.

In the USA, federal civil service salaries are made publicly available (US Office of Personnel Management, 2011). The state of California has now also introduced transparency about public servants' pay.

In Canada, rates of pay for the Public Service salaries for every occupation and all steps on the salary scales are published on the internet (Treasury Board of Canada Secretariat).

Changes in the organisation of work

The way work is currently organised has not kept pace with the huge changes in society, culture, the economy and demographics that have occurred in the past four decades (Working Families, 2010). The workforce is now older, globalised and multi-cultural. Almost half the workforce is female, and women increasingly remain attached to paid work throughout their fertile years. 'Non-standard' work has increased, especially amongst young and older workers, and mothers (McPherson, 2006).

However, the best-paid, most secure and most senior positions are still filled mainly by non-disabled males of European descent. Work is still organised in ways that reinforce gender pay gaps. Women and many ethnic minority groups occupy more marginal positions in the work force. These groups lose a high proportion of their lifetime earnings, and are vulnerable to poverty in old age (Gray et al, 2005; Australian Human Rights Commission, 2010).

Research shows that organisations still expect a degree of availability from their senior staff that is incompatible with running a home and caring for children (Working Families, 2010; Gregory, 2003: 97-106). Fathers are on average out at work for longer hours than childless men and considerably longer than mothers. Fathers often miss out on family life while their children are young. This also reinforces gender divisions of at home and in paid work.

Unpaid work

In New Zealand, unpaid work takes up more time than paid work does; and is equivalent to two million full time jobs (Statistics New Zealand, 2001a). This work – such as raising children and caring for aged relatives – is vital to the wellbeing of society, and the economy could not function without it. The need for unpaid caring work has not diminished, and is predicted to grow as the population ages.

Around two thirds of unpaid work in English-speaking countries is performed by women (Bittman, 1991; Bittman and Pixley, 1997; UNPAC, 2007; Statistics New Zealand, 2001a). In New Zealand, on average 70 percent of women's work is unpaid, whereas the majority of men's work (60%) is paid (Statistics New Zealand 2001b).

New figures on unpaid work will be available in 2011 following the second Time Use Survey.

In Australia, Canada, the UK, the USA and New Zealand carers of young children have the right to request flexible work. It has been found in Australia and America that relatively few men request flexible work arrangements even though a high proportion say they would like flexible work. This is because of concerns about adverse effects on money, careers and job security (Stockwell, 2006; Australian Human Rights Commission, 2010:11). At present flexible working is seen as mainly for mothers and consists mostly of part-time work that lacks opportunities for career development (Briar, 2009: 183).

In the UK, the government has extended the right to request flexible work to all employees, not only carers (HM Government, 2010:9,15). It applies to employees in organisations of any size (Equality and Human Rights Commission, 2010). In Australia it has been recommended that the right to request flexible work also be extended, so that flexible working becomes a normal part of workplace culture (Australian Human Rights Commission, 2010). In New Zealand a review of the Employment Relations (Flexible Work Arrangement) Act, "will be completed in 2010 and will consider whether the statutory right to request flexible work should be extended to all employees."⁹ This report is due in May 2011.

Extending the right to flexible working to all could enable people in senior roles to lead more fulfilling work and family lives. Greater incentives to allow men to access paid parental leave should be on policy agendas. Employers could retain senior staff who want more balanced lives, while also utilising the talents of people currently in jobs for which they are overqualified. And as the workforce ages, flexible work can help retain the skills and experience of older employees.

Redesigned in this way, flexible working is likely to be beneficial to society and businesses. It will no longer be seen as 'atypical' and is less likely to result in discrimination in pay and opportunities.

⁹ See <http://www.dol.govt.nz/worklife/flexible/act.asp> accessed on 21 March 2011

Can we make equality work?

Only governments have the power, resources and mandate to bring about greater equality and fairness in the world of work.

Governments leading by example

Governments, as well as legislating on equalities, are large employers, enabling them to lead by example.

For example, in the UK the government proposes to lead by example through its aim that by 2015, 50 percent of all new appointees to public boards will be women. The government will also work with private business to develop measures to promote more women onto the boards of listed companies (HM Government, 2010).

In Australia, it has been recommended that there be a 40 percent minimum target for women on all Australian Government boards within three years and on all publicly listed boards within five years (Australian Human Rights Commission, 2010).

Successive New Zealand governments since the 1980s have committed to gender balance or 50 percent on government-appointed statutory boards. New Zealand boasts an impressive 41.5 percent of women on government appointed statutory bodies. However, over the years the timetable for gender balance, has been regularly revised but not met (New Zealand Human Rights Commission 2010c).

In general, equality duties are established earlier in public sectors than in private sector employment. Currently in New Zealand, public sector employers, but not private sector employers, have a duty to promote equal employment opportunities for target groups.

Governments also send a clear message to other employers about the importance of equalities by the ways in which equality at work is supported and resourced, and at what level.

Resourcing, educating and training

Many employers and target group members are unaware of why inequalities at work exist and what can be done to remedy them. In the UK, as well as funding the Equalities and Human Rights Commission, the government funds the Arbitration and Conciliation Advisory Service (ACAS) to provide education and training to employers on their responsibilities under the Equalities Act.

To bring about greater equality, employers and the public will need to be better educated about their rights and responsibilities. This will include:

- Ensuring that everyone, including member of target groups, understands what is involved in equality at work
- Making examples of successful equalities projects available to the public (Wild, 2010:5).

Monitoring and reporting

Effective monitoring is essential for assessing how well equalities policies are working. Monitoring itself affects performance in moving towards greater equality. This is because being monitored increases employers' desire to achieve positive results.

All countries which have legislated for equality at work programmes have reporting requirements, but the level of reporting required and the penalties for non-compliance vary (Human Rights Commission, 2009).

In the UK, there are strong reporting requirements in the public sector. In addition the government will work with the private and voluntary sectors to develop a voluntary system for monitoring equality. It intends to 'shine a light' on which organisations are doing well at promoting equalities and which are not (HM Government, 2010).

In Australia private sector firms with over 100 employees¹⁰, as well as all public sector employers are required to report on progress towards equality at work. Last year in Australia the Equal Opportunity in the Workplace Agency found that that 2,587 companies complied with reporting requirements, with only 12 being non-compliant¹¹ (Women's Electoral Lobby, 2010). There are also proposals for further strengthening the monitoring and reporting requirements of employers under the sex discrimination legislation (Australian Human Rights Commission, 2010).

In Canada, federal government organisations are obliged to conduct audits, and these must include programmes to address and remedy issues that are uncovered (Human Rights Commission, 2009).

The New Zealand public sector has annual reporting requirements as part of its 'good employer' obligations. These are described as 'light handed' (Human Rights Commission, 2009). No reporting requirements exist for the private sector, which employs around 80 percent of the workforce. Reporting to international treaty bodies provides an opportunity for government, the Human Rights Commission as a National Human Rights Institution and civil society to monitor and comment on progress towards equality at work. The Human Rights Commission regularly reports on progress (or lack of it) on equality, for example the biennial Census of Women's Participation.

Monitoring *equality of outcomes* is the test of the effectiveness of equal pay and EEO policies and income adequacy. Inequality of outcomes refers to aggregate labour market outcomes, including earnings and seniority of target groups.

Enforcing the existing legislation

Equality legislation is only effective when it is enforced. For example in New Zealand the Equal Pay Act 1972 is in some cases not being implemented or utilised, and some employers are avoiding their legal duty to correct inequalities that have come to light.

¹⁰ Small to medium-sized organisations in the private sector are acknowledged to be difficult to monitor.

¹¹ Unfortunately the reporting showed a decrease in the numbers of women in senior management. Hopefully this information will prompt remedial action.

In the UK, the Equality and Human Rights Commission (EHRC) has had powers of enforcement of the equality legislation since 2006. In practice, in the majority of cases (approximately 80%) the Commission is able to negotiate compliance with the legislation without the need for bringing formal enforcement proceedings (Equality and Human Rights Commission, 2010).

In the UK public sector, assessments can be used by the EHRC to test compliance with public sector equality duties regarding the race, disability and gender equality provisions of the legislation.¹² These assessments focus on both strengths and weaknesses.

The EHRC also has powers to conduct inquiries into suspected breaches of the legislation's equality and diversity, discrimination and harassment provisions. No specific standard of evidence is required to trigger an inquiry.

Effective enforcement of equality legislation depends on adequate resourcing of the enforcement agency or agencies, and the level of those agencies. The Australian Human Rights Commission has urged that the Federal Office for Women is adequately funded and has influence at the highest level of government (Australian Human Rights Commission, 2010:20). The UK has now created its first ever Ministerial Group on Equalities (HM Government, 2010). In New Zealand a Ministerial Group on Disability Issues has been created.

Strengthening the legislation

Where equalities policies are still not delivering equality at work due to weaknesses in the law, there is scope for strengthening the legislation. The UK equalities legislation has been strengthened several times by different administrators, most recently in with the passage of the Equality Act (2010). The Australian Human Rights Commission (2010) has recently recommended that Australia strengthen its gender equality legislation.

The Human Rights Commission's 2004 *Framework for the Future* pointed out the importance of strong legislation (Mintrom and True, 2004:9) and commented that New Zealand has a comparatively 'light touch' regime with respect to equality legislation (Mintrom and True, 2004: 23). The *National Conversation at Work* report recommends strengthening the Equal Pay Act (1972) to include equal pay for work of equal value (Human Rights Commission 2010).

¹² For example, a public sector duty assessment has been conducted with the Department of Work and Pension's Jobcentre Plus, finding the organisation needed to do more to promote equality.

The business case for equality at work

The literature discusses the huge potential economic benefits from promoting equality. The business case for equality is based on its benefits to individual businesses and the whole economy (Wild, 2010). Businesses with diversity in their leadership groups have been found to be more resilient, more likely to be 'employers of choice' and to retain good staff.¹³ By contrast, unequal pay generates a sense of unfairness, reduced staff engagement and is known to contribute to lower productivity. In addition, the skills and leadership potential of many target group members are under-utilised due to prejudiced thinking.

In the UK, it is estimated that increasing women's employment and addressing gender segregation at work could add 15–23 billion pounds annually to the economy, whilst more fully utilising the skills of members of ethnic minorities could add a further 8.6 billion pounds a year (HM Government, 2010:8; Women and Work Commission, 2006; National Audit Office, 2008). Full gender equality has the potential to raise the GDP of the UK by 35 percent (Walby and Olsen, 2002; Wild, 2010). In New Zealand the EEO Trust has done considerable work on promoting the business case for equal employment opportunities and annually hosts an awards evening to acknowledge employer best practice.

¹³ For example, the Nationwide Building Society carried out an equal pay audit covering gender and ethnicity. They addressed the issues uncovered. Subsequently employees' satisfaction with the organisation rose, staff turnover fell and the Society's share of the market expanded and its assets grew.

Conclusions

New Zealand has international obligations regarding equality at work that have not yet been properly met. The country also has domestic obligations to promote the human rights and the economic, social and political wellbeing of all New Zealanders. In particular, the Treaty of Waitangi is a founding document, and it is unacceptable that Māori should currently have lower pay and higher unemployment than other New Zealanders. A new and updated equality-at-work framework will help New Zealand meet its international and domestic obligations.

When equality at work is finally achieved it should mean that:

- Members of target groups will have equal access to 'decent work'¹⁴ and the full range of occupations
- Clarity and transparency about earnings and opportunities for progression will be the norm
- Target groups will no longer be over-represented as casual or temporary workers, or disproportionately made unemployed in recessions
- Similarly qualified people appointed to the same jobs will have equal starting pay and opportunities for pay progression
- Male-dominated and female-dominated occupations that are of equal value will be paid equally
- Social and cultural groups that are currently under-represented will be found in senior and leadership roles in equitable proportions
- Fathers as well as mothers can combine paid work and family life
- The right to request flexible working will be available to all workers
- Flexible work will provide employees with equal (pro rata) training, development and progression opportunities.

The international trend is towards equality-at-work frameworks that recognise the importance of transparency, fairness, government-led action, proper resourcing, education and enforcement of equalities legislation.

As a world leader in progressing equality, New Zealand needs to ensure it has a strong legislative and normative commitment to equal employment opportunities that can be expressed readily in policies and practices that improve decent work for everyone.

¹⁴ The International Labour Organisation (ILO) advocates 'Decent Work for All Women and Men, in conditions of freedom, equity, security and human dignity.

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