

Getting the framework right? The role of regulation in promoting EEO

Equal Opportunity for Women in the Workplace Act & Agency Review: A Roundtable Discussion

4 August 2009

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Regulation to advance gender equality in employment

- IR regulation that provides minimum standards and that underpins and promotes decent work for women
- AD/IR provisions that facilitate individual remedial action in response to individual claims through complaint based mechanisms
- AD/IR provisions that facilitate group/industry based remedial action in response to identification of systemic discrimination through complaint based mechanisms and/ or inquiry powers
- Positive action that shifts burden on to workplaces to identify and address systemic discrimination regardless of receipt of complaints

Positive Action: Some options

- Gender equality duty/plan
- Specific equal pay action/audits
- Procurement policy/industry assistance
- Quotas and targets

Gender equality duty/plan

- Creating + implementing a duty to proactively promote gender equality
 - build on current requirements under EOWWA that are strengthened and transparent
- International experience
 - UK: Gender Equality Duty require public authorities to:
 - **prepare and publish** a gender equality scheme, showing how it will meet its general and specific duties and setting out its gender equality objectives
 - in formulating its overall objectives, consider the need to include objectives to address the causes of any gender pay gap
 - gather & use information on **how the public authority's policies and practices affect gender equality in the workforce & in the delivery of services**
 - **consult stakeholders (i.e. employees, service users and others, including trade unions)** and take account of relevant information in order to determine its gender equality objectives
 - **assess the impact of its current & proposed policies & practices** on gender equality
 - implement the actions set out in its scheme within 3 years, unless it is unreasonable or impracticable to do so
 - report against the scheme every year & review the scheme at least every 3 years.

Gender equality duty/plan...

- International experience
 - UK: Gender Equality Duty
 - 2009 review (Schneider & Ross 2009)
 - Wide acceptance by public authorities
 - data-driven performance management successful
 - Northern Ireland: 1989 Fair Employment and Treatment Order (FETO)
 - statutory requirement on private sector employers to monitor and report on their equality practices, in relation to the employment of Catholics
 - if companies fail to meet statutory reporting, workforce monitoring requirements, or instructions to apply affirmative action, sanctions can be placed on employers including exclusion from public authority contracts
 - substantial improvement in the employment profile of Catholics;
 - large increase in the numbers of people working in integrated workplaces;
 - employers report strong legislation has helped change practices.

Specific pay equity action/audits

- Options
 - specific regulation/part of gender equality duty
 - mandatory/voluntary
- Queensland Pay Equity Inquiry 2007 rec:
 - Pay Equity Act to cover **all** employers with 15+ employees:
 - the development of pay equity plans;
 - the establishment of pay equity committees;
 - legally binding documentation of pay equity adjustments;
 - the implementation of adjustments where pay inequity is found;
 - mandatory reporting;
 - dispute resolution; and sanctions for non-compliance
- Mandatory pay equity plans/reviews
 - Ontario PE Act covers public and private sector
 - UK mandatory equal pay reviews only in civil service/voluntary in private sector
 - mixed experience: few companies considering doing a GPR, even fewer implemented this

'You expect that things happen equitably. People might have perceptions about where they sit but by doing the exercise, collecting the evidence, you do see what's really happening. In a modern workplace, this sort of data is invaluable.'
Peter Brown CEO Moreland City Council

Procurement/industry assistance

As a:

- *stick* for employers who fail to comply with positive duties
- *carrot* to 'buy' equality outcomes

Procurement

- Northern Ireland; exclusion from government contracts used as sanction for failure to comply with FETO – found to be very effective
- UK Equalities Review: procurement generally accepted by the business community to be 'a sensible approach for government'
- Victoria → gender equality in briefing practice
 - Victorian Bar Equality of Opportunity Briefing Policy + Vic govt survey on govt/legal panel briefing practices:
 - reporting briefing choices influence more equitable distribution of work because more accountability (Beaton report)
 - % of briefs vs % of income being discussed and debated

Requirements for receipt of **industry assistance**?

- Used in development context: eg Australia thru AusAid requires GE plans/demonstrated outcomes to countries to which it provides aid

Quotas/Targets

- Quotas

- Vic government pro bono services

- Legal firms that get government work have to commit to provide legal services on a pro bono basis to \$ value of 5% – 15% of fees generated through govt tenders

- Increased pro bono work in legal services, now seen as normal adjunct to commercial legal work (PILCH 2008)

- Norway

- 2005 publicly-listed companies: ↑% of women on boards by 2008

- boards to have between 33-50% of men/women

- boards with 10+ members to have at least 40% women

- Escalating sanctions → fines → deregistration from Oslo Stock exchange → dissolution

- 2002: women only 6% of board members

- 2008: women 40%+ board members & 80% of firms compliant (Kilday 2009)

- Targets

- In UK civil service gender pay reviews

- Business response to visible inequality in Aus eg gender hiring targets/training spend targets

Constraints on regulation

- Regulation provides a framework for other action
- Not sufficient alone
- To be effective needs:
 - Political will/political champions
 - Resourcing
 - Collection & publication of data
 - Whole of government commitment
 - Community education/consultation
 - Ongoing evaluation/research