

The equal pay principle



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With the Australian Council of Trade Unions now embarking on important test cases, we can expect equal pay to be a focus for industrial relations attention in the months ahead. Many say 'not before time'.

Research studies continue to warn of negative outcomes for women under enterprise bargaining. One way to reduce these dangers is through stronger efforts to implement the equal pay for work of equal value principle, included in Australian law through the 1994 *Industrial Relations Reform Act*. With that in mind, it is probably timely to reflect on some of the inequities which still exist — and on just what the equal pay principle involves.

The concept of equal pay for equal work was adopted in Australia more than twenty years ago. Since then differential rates in awards for men and women doing the same jobs have largely disappeared. But women have continued to earn less than men overall. The *Industrial Relations Reform Act* took the concept further by adopting the text of the international *Equal Remuneration Convention*. This aims to eliminate all pay differences which are based on gender, whether directly or indirectly. And in this context it is most important for employees and their organisations to understand that 'remuneration' is defined very widely. It does not mean only that award wage rates must be the same. Under the law, remuneration is 'the ordinary basic or minimum wage or salary, and any additional emoluments whatsoever, payable directly or indirectly, whether in cash or kind'.

As well, the law now clearly goes beyond the notion of equal pay simply for the same work. The Act emphasises that the meaning of equality now turns on objective comparison and evaluation of the *content* of jobs being done by men and women. It clearly envisages that proper job appraisals will be conducted to make genuine comparisons. These are not restricted to women and men in the same organisation or occupation or to people using the same skills or techniques.

Recent cases that I have been handling for ALIA members highlight a general ignorance of these legal developments in some organisations. There are still glaring examples of inconsistent and unfair allocation of non-cash elements of total remuneration, for example. Managers need to understand that fair salary systems must address all of the components of reward. Policies which do not take account of all benefits are simply unlawful, given the definition of remuneration which now prevails. And various other established practices which produce unequal outcomes for particular groups, especially

women, are most likely to be illegal too. Far too often managers continue to believe that only *behaviour* can produce discrimination. Obviously, inappropriate behaviour (such as sexual harassment, for example) can often create direct discrimination.

But for organisations, the effect of policies are more often the basis for findings of discrimination. This is indirect discrimination. It is not the *intention* which matters here. Rather, the *outcomes* are the issue. It is most important to recognise that indirect discrimination is every bit as much against the law as the more dramatic and obvious cases of direct discrimination.

Some workplace practices were established many years ago, when legal standards and social values were vastly different. To continue them unthinkingly means organisations risk falling foul of contemporary law. Many such policies and practices may not appear obviously discriminatory until they are examined specifically for their effect on women or other groups. Then the illegality soon becomes apparent.

As good a definition of indirect discrimination as there is came from Chief Justice Bowen in the Federal Court when he described it as: 'practices which are fair in form and intent but discriminatory in impact and outcome' (*Department of Foreign Affairs and Trade v Styles, 1989*). Prudent managers will be taking action now to ensure their policies do not fall within this description.

As members of one of the most highly feminised occupations, librarians may rest assured that the Association will be vigorously pursuing cases where indirect discrimination is still evident in remuneration systems. In particular, ALIA will strongly oppose the tendency for some organisations to allocate non-salary benefits (such as motor vehicles) inconsistently after job evaluation has supposedly established objective relativities. This simply makes a mockery of fair comparability.

The issue of equal remuneration for work of equal value is a vital one for librarians, and not just for the majority who are women. In the highly feminised employment categories historical inequities affect all members, regardless of their gender. Action to ensure that pay equality involves all elements of remuneration and benefits constitutes a major step in the quest for improved equity.

ALIA will be looking closely at initiatives which can be taken in the equal pay area. Members seeking support or wanting to discuss the subject generally should contact me on (06) 285 1877 or e-mail phil.teece@alia.org.au ■

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