Week9 Regulating diversity, safety, and dismissal

What institution are available in terms of diversity safety and dismissal

**Delegated regulations**

- The **parliament** creates legal rights and obligations through legislation (broad)
- The **state agencies** and the courts are delegated to create **more detailed rules** and their **enforcement** (detailed)

There is a framework that Australia use: Equal Employment Opportunity

… an organisation will be managed according to a regime where the best person for the job (in terms of promotion, opportunity for training or transfer, etc) irrespective of matters of group identity such as gender, race, colour …, will be able to perform in that position according to their intrinsic merit.

*Tells us no matter which group identity we belong to or we perceive or we contrast, as an individual who we are or that the diversity or dimension that we have shouldn't affect our employment in terms of promotion, opportunity for training or transfer (are we Asian are we muslin are we christian short or tall. These shouldn't have any bearing into what we do for our living so employment condition should be irrespective of what's our individual identity as well as group identity are)*

Three levels of action on EEO

There are action needed on three different levels

| Level | Agency | Examples |
|---|---|---|
| International | International Labour Organization | The ILO's *Equal Remuneration Convention 1951* (no.100), the Discrimination *(Employment and Occupation Convention) 1958* (no.111) and the *Equal Treatment for Men and Women Workers with Family Responsibilities Convention 1981* (no.156) |
| National/state | Parliament, plus state agencies and courts | National laws against discrimination and promoting affirmative action |
| Organisational | Management, possibly with employees and their representatives | Organisational policies and practices on recruitment and selection, training, performance appraisal, promotion and dismissal<br>Bray et al, (2014, p. 280) |

They try to bring in equal opportunity for a person in relation to any dimension of their diversity

In Australia, equal employment opportunity is divided/implement into two different models

1. The complaints-based anti-discrimination model
   - Discrimination is illegal Which makes discrimination illegal *(an employee should not be discriminated against their dimension of diversity)*
   - Grants employees a general legal right not to be discriminated against *(in employment or outside employment)*
   - Provides a **complaint procedure** by which affected employees can take legal action *(complaint procedure means individual needs to take action, there isn't anything on*

*organisational level such as organization have the duty to look after any policy which means It normally starts after the incidence occur )*

- Common in English-speaking countries - the United States, Britain, New Zealand, and Australia

**It is a highly individualised model**

It provided employees with a legal procedure so once incidence happen employee can go and lodge a complaint to agency there are some remedies that offer that is a way to enforce employment legal rights**. It starts after the incidence occur** which means that any specific standard that an organization need to focus on and no specific process based standard that an employee can look up to. It also means no duty for an employer to identify potential or actual discrimination. If there is a person..

| **No** | **No duty to** |
|---|---|
| -specific standard | -identify potential or actual discrimination |
| -No process-based standard | -educate workplace participants |
| | -establish a policy against discrimination |
| | -establish internal grievance procedures to assist anyone |

It depends on a hope or exception that anti- discrimination laws will change

That anti-discrimination laws will change because

- Organisations seeks to comply with laws
- Proactively avoid complaints and litigation by the employees (they will do anything to supress the complaint)
- Many organisations incorporate anti-discrimination principles into every human resource function to avoid litigation

Anti-discrimination statues: Illegal to discriminate against employee's Race, ethnic origin, age, disability, gender, marital status, pregnancy, religion, political opinion, and trade union activity

The Fair Work Act 2009 (Cth)

In addition to this, the fair work act 2009 also conclude that

- Includes sexual preference and family or carer's responsibility (parents/ children to look after)
- Provides general protection provisions
    - Prohibit unlawful discriminatory treatment of employees
- Unfair dismissal and unlawful termination provisions
    - Afford protection for employees whose employment has been terminated for a discriminatory reason

## Looking back

It is also a good time to look back how it all begin. Before 1975 there is no anti-discrimination law

- *Race Discrimination Act 1975*
    - (Cth) Whitlam Government
    - State anti-discrimination laws -1975 SA and 1977 NSW
- *Sex Discrimination Act 1984 (Cth)*
    - Hawke Government
    - **Includes gender for the first time**
    - Eliminates discrimination on the basis of gender, marital status,
    - pregnancy or potential pregnancy
    - A regulatory process – a general legal right to all employees
    - Prohibits sexual harassment in the workplace and in other public domains

- The *Human Rights and Equal Employment opportunity Act 1986* (Cth)

    - <u>Established the Human Rights and Equal Opportunity Commission</u>

    - The *Disability Discrimination Act 1992* (Cth) fot yh

        - For the first time Expanded the anti-discrimination law to include disabilities

- The *Sex and Age Discrimination Amendment Act 2011* (Cth)

    - Reduced threshold of proving sexual harassment

    - Included discrimination against family responsibilities and breast feeding

The Human Rights and Equal Opportunity Commission (HREOC now AHRC)

Lodge a complain to commission then an officer investigate if they believe the reason then proceeds to proceeds to conciliation but they can't make any binding judgement which the federal court able to do

## Federal V/s State

- If a complaint is under both federal and state law, complainants are required to elect in which jurisdiction thy want to have their complaints heard

- The state tribunals can resolve complaints using conciliation but can also award damages or make orders for reinstatement which the AHRC is not empowered to do

An evaluation

- The Acts challenged organisational cultures of discriminatory practices

- Encouraged employers to remove discriminatory practices from hiring, promotion, and termination decisions

- These laws unduly interfere with managerial decision-making

- These laws have not gone far enough to protect employees

- The SD Acts do not impose positive duties on employers to identify discrimination or educate employees

- The AHRC does not have power to begin investigations and enforce judgement

## 2.The affirmative action model

- Governments impose obligations on employers to positively discriminate in favour of some category of employees who have historically suffered discrimination (for example: woman)
- Not complaint-based or individualised but specific organisational policies and practices to which organisations must comply *(no need to wait for discrimination to happen)*
- Extends from number of nominated category to reporting on number of women in senior positions within the organisation

### Three attempts in Australia

1. *Affirmative Action Act 1986* (Cth)
   - Introduced by the Hawke Labor Government
   - Targeted towards private sector employers with more than 100 employees
   - Eliminated barriers and practices disadvantaging women
   - Followed a eight step program
   - Required to submit a public report to the parliament
   - Failure led to naming of the employer in federal parliament
   - Less than 3% of the companies were named in parliament
2. *Equal Employment Opportunity for Women in the Workplace Act 1999* (Cth)
   - Introduced by the Howard Government
   - It replaced the *Affirmative Action Act 1986* (Cth)
   - Simplified reporting requirements for employers
   - The Act changed the reporting requirements from one to two years
   - Removed the requirement to consult with trade unions
   - Emphasised a facilitative approach to compliance
   - Provided employers with greater flexibility
3. *Workplace Gender Equality Act 2012*(Cth)
   - Introduced by the Gillard Government
   - It replaced the 1999 Act
   - Targeted towards private sector workplaces and higher education employers with more than 100 employees
   - These employers are required to produce annual compliance reports
   - Make these reports available to shareholders and employees for comments
   - Random spot checks
   - Naming on its website or in newspaper publications