

EMPLOYMENT EQUITY

Issues of Competition and Regulation

NEW ZEALAND BUSINESS ROUNDTABLE

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EXECUTIVE SUMMARY

- * In New Zealand, as in other OECD countries, the historical pattern has been for women in the workforce to be concentrated in a relatively small number of occupations, and in the lower ranks of these and other occupations. Their average earnings have also been lower than those of men. The trend has been for participation to broaden and for earnings differentials to narrow, to the point where in February 1988 women's average ordinary-time hourly earnings were 80 percent of those earned by men.
- * There are a number of reasons for prevailing differences, including differences in qualifications and in the level and continuity of work experience, and preferences for particular occupations for reasons other than the rate of pay. Inequalities in outcomes, when based on factors such as these, cannot be regarded as inequitable. However, if unequal outcomes for women and men, or for Maori and Pakeha, disabled and able-bodied, are instead in part the result of discrimination by employers or other workers, they are unlikely to conform with accepted standards of social equity.
- * While discrimination itself is often difficult to identify and measure, it is possible to define the conditions under which employers can *afford* to discriminate, whether in recruitment, promotion, training or remuneration decisions. The most powerful check on discrimination is competition - competition between employers for workers, for markets and for capital. Similarly, it is the ability of workers to compete for jobs that frees the least advantaged to price themselves into employment.
- * Barriers to competition reduce the penalties for discriminatory behaviour. Some barriers occur as natural features of markets, for example as a result of the high costs of information about prospective employees. The more significant barriers to competition are, however, regulatory ones - restrictions on wages and conditions of employment, restrictions on how workers may be represented in negotiating employment contracts, restrictive occupational licensing requirements, and, more generally, regulatory constraints on competition in markets for goods and services and for finance. From this perspective, a concern to promote equity in employment relationships translates in policy terms into a concern to minimise regulatory barriers to competitive checks on discriminatory behaviour.
- * The report of the Working Group on Equal Employment Opportunities and Equal Pay, proposing comparable worth and target-based equal employment opportunities legislation, is at odds with this analysis. The report glosses over issues such as how and where discrimination might occur, in effect assuming discrimination on the basis of inequality of outcomes, and derives a case for legislation from a specification of equity which is expressed primarily in terms of outcomes. In other words, it is deficient in its analysis of both the problem and its legislative implications.

- * The policies proposed by the Working Group would increase the barriers to market checks on discrimination by employers. In the process, they would have a negative effect on both economic efficiency (and hence the potential for economic growth and job creation) and equity.
- * In particular, the *pay equity* proposals would involve basing pay on the results of inevitably subjective job evaluations and comparisons, rather than on supply and demand, in a manner that would call into question many other aspects of a competitive economic system. They run counter to other Government initiatives, such as the increased emphasis on supply and demand in public sector pay-fixing. If implemented, they would reduce the employment opportunities available to both women and men. While the income of some women would be raised, this would be at the expense of women who either lost their jobs or faced reduced employment options as a result of the policy. The latter are likely to be concentrated among the least skilled and least mobile women workers.
- * While *equal employment opportunities* policies concerned purely with the equity of processes (for example in recruitment and promotion) could yield improved overall welfare, this would not be the case if an emphasis on targets led to recruitment and promotion other than on true merit. By creating a preoccupation with equality of outcomes, the implementation of the Working Group's proposals could well have adverse results.
- * Such preferential policies must be distinguished fundamentally from policies mandating the equal treatment of individuals, such as the Equal Pay Act 1972 and the Human Rights Commission Act 1977. The latter are founded on consideration of equality in terms of basic human rights, whereas the former, by seeking to impose outcomes through preferential treatment, are in fact in conflict with basic equity objectives.
- * A more efficient and equitable means of reducing the potential for discrimination in employment relations, supported by the Business Roundtable, would be to reduce regulatory barriers to competition in the labour market, both through the review of occupational licensing and through reform of the Labour Relations Act. The impact of other areas of economic regulation in protecting discriminatory behaviour should also be assessed.
- * In addition, the Business Roundtable recommends that the current education reforms be used to provide incentives within the education system for the breaking down of inappropriate racial and sexual stereotypes and longer-term societal discrimination, and that further consideration be given to the role of the government in public education on equal opportunities issues.

I INTRODUCTION

Towards Employment Equity, the report of the Working Group on Equal Employment Opportunities and Equal Pay, proposes the introduction in New Zealand of an "Employment Equity Act", providing for "pay equity" and "equal employment opportunities". The former, a form of "equal pay for work of equal value" or comparable worth policy, would apply to women in "female occupational classes" - defined as those in which 60 percent or more of employees are women - but would also enable "equal pay for equal work" claims in any occupation. The latter, requiring target-based equal employment opportunities programmes at the company level (mandatory for companies with 50 or more employees), would be aimed at improved representation of women and "designated groups" - Maori, Pacific Island peoples and other minority ethnic groups, and people with disabilities.

The Working Group's proposals are based on the observation of inequalities in earnings between males and females, and unequal employment opportunities for women and members of the designated groups. These are attributed at least in part to discrimination, and the proposals are essentially framed in terms of combating or preventing discriminatory behaviour on the part of employers. These proposals are specified primarily in terms of employment and earnings outcomes - equity effectively being measured by equality of results, rather than the underlying equity of processes.

This paper sets out to assess the significance of discrimination to outcomes, and the factors which will allow discriminatory behaviour to be perpetuated. This involves an emphasis on the *processes* by which workers are recruited, promoted and remunerated rather than on *outcomes*, and leads in terms of policy recommendations to an emphasis on reducing existing regulatory constraints on the employment and earnings prospects of women and disadvantaged minority groups. It is argued that, in contrast, the Working Group's "employment equity" proposals would in practice prove inequitable, benefiting relatively well-off members of these groups at the expense of their more vulnerable members, as well as reducing the efficiency of the economy and its capacity to generate employment opportunities through economic growth.

The paper begins in Section II by considering the available data on the position of women in the workforce in New Zealand, and the factors potentially explaining differences in men's and women's employment and earnings. (While the emphasis is on issues facing women in employment throughout, the arguments may be taken as applying in similar ways to the designated groups.)

Section III discusses the nature of discrimination and the conditions - found in both the natural features of markets and in regulatory structures - which may foster it. Section IV assesses the proposals of the Working Group for pay equity and equal employment opportunities legislation, and Section V canvasses alternative policy approaches. Conclusions are presented in Section VI.

II THE POSITION OF WOMEN IN THE WORKFORCE

"[T]he Working Group concluded that inequality of treatment in employment exists in New Zealand. The inequality takes the form of inequality of earnings between males and females, and the lack of employment opportunities for women, Maori, Pacific Island peoples and other ethnic minorities, and people with disabilities...

"This inequality is attributable to a number of factors. These factors include market factors such as the supply and demand for different types of labour, human capital factors which may disadvantage particular groups in the workforce, and discriminatory behaviour towards individuals or groups of employees that disadvantages them. The literature does not reveal an ability to precisely weight these factors. It does agree however that all factors are important, including the discriminatory factors."

(Wilson, 1988, p 6)

Workforce participation by New Zealand women has increased dramatically in recent decades. While women accounted for only 23.2 percent of the full-time labour force in 1951, they made up 34.2 percent in 1981¹. Over the same period, the activity rate of women² rose from 28.4 percent to 45.8 percent, and that of married women from 9.7 percent to 35.8 percent³. Women also make up a large proportion of the part-time labour force, accounting for 82.6 percent of it in 1981⁴. At the 1986 Census, which defined full-time work as 30 hours or more per week, 37 percent of women (41 percent of Maori women) were found to be active in the full-time labour force, and 16 percent (15 percent of Maori women) in the part-time labour force.

Women workers are concentrated in a relatively limited number of occupations, and tend to dominate these occupations. In the part-time labour force, they are found predominantly in clerical, cleaning or housekeeping work. Around one third of all full-time women workers are in clerical work. In the 1986 Census, six occupations - clerical, sales, teaching, medical, typing and book-keeping - accounted for over half of all women in the workforce. Women make up over 60 percent of the workforce in each of these occupations⁵. Women also appear to be

1 Census figures.

2 The activity rate measures women active in the full-time labour force as a percentage of all women aged between 15 and 64.

3 Horsfield (1988), Table 1.1, p 257.

4 76.1 percent of these women were married.

5 See Horsfield (1988) Table 1.23, p 279. In the category of stenographers, typists and card and tape punching machine operators, women outnumber men by 53.7:1.

concentrated at the lower end of job hierarchies, although there is some evidence that this segregation has been breaking down over time (see Table I).

Table I
Occupational Division of the Workforce

| | 1971 | | 1981 | |
|-----------------------------|----------|------------|----------|------------|
| | Male (%) | Female (%) | Male (%) | Female (%) |
| higher professional | 4.0 | 0.7 | 4.7 | 1.2 |
| lower professional | 6.4 | 16.5 | 7.0 | 16.5 |
| administrative & managerial | 7.7 | 2.1 | 8.4 | 3.0 |
| clerical | 6.6 | 30.7 | 5.1 | 29.9 |
| sales | 6.7 | 10.6 | 6.5 | 10.2 |
| supervisors | 4.3 | 1.1 | 4.2 | 1.6 |
| skilled manual | 31.2 | 11.9 | 28.9 | 10.3 |
| unskilled manual | 32.2 | 25.0 | 31.6 | 23.4 |
| not specified | 1.1 | 1.4 | 3.6 | 4.0 |
| | 100.0 | 100.0 | 100.0 | 100.0 |

source: New Zealand Census data

Horsfield (1988) documents marked increases in women's participation in "top" white collar jobs since the 1950s, with architects, engineers and surveyors who were women rising from 0.9 percent in 1956 to 2.8 percent in 1981, doctors from 13.1 percent to 20.9 percent, dentists from 7.2 percent to 24.2 percent, lawyers from 6.6 percent to 18.8 percent, government officials from 1.9 percent to 9.7 percent and general and production managers from 1.2 percent to 5.8 percent⁶.

Hierarchical segmentation is marked within female-dominated occupations as well as in the workforce as a whole. For example, while women made up 57.6 percent of the teaching

⁶ Horsfield (1988), Table 1.26, p 283. The only decline over this period was in the "scientists" category, where the proportion of women fell from 16.2 percent in 1961 to 9.6 percent in 1966 and 1976, before rising to 13.6 percent at the 1981 Census.

profession at the 1981 Census, they contributed only 14.6 percent of school principals and 13.5 percent of school inspectors. Data on clerical workers cited in Hyman and Clark (1987) indicate a concentration of women in areas requiring keyboard skills and of men in managerial clerical positions, women overall being disproportionately represented in the lower income brackets within the group.

Over the period since the passage of the Equal Pay Act in 1972, the ratio of women's to men's average ordinary time hourly earnings has risen from an estimated 69.9 percent to 80.3 percent in February 1988. (This represents a significant increase by international standards.) The available data on earnings are insufficiently disaggregated to make meaningful comparisons between earnings in "female-dominated" and "male-dominated" occupations. However, there is evidence of earnings differentials between male and female workers across all occupations, although the size of the differential does not appear to be related to the degree of occupational segregation (see Table II).

Table II
Median Income for Full-Time Workers by Occupational Group (1986)

| | males (\$) | females (\$) | female/male earnings (%) | female/male employment (%) | share of total female employment (%) |
|---|---------------|-----------------|--------------------------------|----------------------------------|--|
| professional, technical and related | 26,309 | 18,965 | 72.1 | 41.9 | 18.4 |
| administrative and managerial | 28,957 | 19,504 | 67.4 | 14.7 | 2.4 |
| clerical and related | 19,849 | 14,424 | 72.7 | 70.0 | 34.8 |
| sales | 19,305 | 11,413 | 59.1 | 39.0 | 10.9 |
| service | 18,549 | 10,733 | 57.9 | 50.6 | 11.7 |
| agricultural, animal husbandry, forestry, fishing | 12,647 | 8,352 | 66.0 | 21.9 | 7.1 |
| production, transport, equipment operators, labourers | 16,712 | 10,719 | 64.1 | 14.8 | 14.6 |

source: New Zealand Census data

Explaining earnings differentials

The earnings differential between male and female workers has been attributed to a number of factors other than employer discrimination. These include:

- differences in experience and continuity of service;
- patterns of work in high-paying occupations incompatible with child-rearing;
- differences in educational or vocational qualifications;
- differences in access to on-the-job training and promotion.

The major factor contributing to differences in experience and continuity of service is women's departure from the workforce to bear and raise children, reinforced by an uneven sharing of child-raising responsibilities by most couples. There is some evidence that the pattern of workforce participation by women with children is changing over time, as more women delay child-bearing until their late twenties or early thirties, and have fewer children. Horsfield comments that:

"The model of the woman who leaves the paid workforce on the birth of her first child and remains outside the paid workforce for a period of at least five years before re-entering in a part-time capacity, is becoming less appropriate. Nor, however, is the model of a full-time paid worker typical, although more women are taking up full-time paid work. Most women still cease paid work temporarily for child-bearing; no evidence is available to suggest a single 'typical' model of employment behaviour for women after the birth of their first child."

(1988, p 21)

Where women leave the workforce to bear children, their career and earnings prospects on re-entry may depend on the availability of retraining or refresher courses. There is some evidence that women re-entering the workforce face more limited options and lower earnings prospects than at the point at which they left, because of "depreciation" of their skills. Periods of absence are also likely to reduce their access to professional contacts who could act as referees in new job applications. This is likely to affect the occupations chosen by women, their investment in training and the time which they choose to spend out of employment, raising children. For example, evidence gathered by Polachek (1981) suggests that the proportion of years spent as "hometime" is around half as high in professional and management jobs, where depreciation is high, as in service jobs, where depreciation is relatively low.

A related issue is the compatibility of different occupations with child-rearing - the availability of childcare, the flexibility of hours, or the availability of part-time employment. (This may explain, for example, the concentration of women in the teaching and nursing professions.) These features may be determined by institutional factors as much as by

the "natural" characteristics of a job, depending importantly on industrial relations arrangements. For example, unions representing workers in predominantly male occupations and negotiating awards at a national level are unlikely to be greatly concerned to negotiate conditions of employment appropriate for women with children.

Further, to the extent that married women tend to choose the geographical location of their work according to where their husbands are located, rather than vice versa, they are likely to be subject to changes in employment that are not necessarily consistent with their own preferred career patterns.

Evidence from other countries suggests that marital status and child-bearing are significant explanators of the earnings gap. Sowell (1987) estimates that among single workers in the United States, women earned 91 percent the income of men in 1984 (compared with 59 percent for the population as a whole)⁷. Data gathered in Canada in 1971 suggested a near perfect mapping of the earnings of never-married women on those of never-married men (a female:male ratio of 0.992) averaged across all occupations, at a time when the ratio of women's to men's earnings for all workers was 0.374⁸. A study of graduate employees in the United Kingdom by Dolton and Makepeace (1987) suggests that while workforce participation depends on marital status and the presence of a child, earnings, given participation, are not affected by marital status but only by the presence of children.

Comparable data are not available for New Zealand, but a similar pattern is likely.

Differences in education and training are also cited as an explainer of the earnings gap and of the concentration of women in certain occupations. ("Failure" of employers to take proper account of women's unpaid work experience is also sometimes cited in this regard.) Data on the educational and vocational qualifications of the full-time workforce at the 1986 Census are shown in Table III.

There is also evidence that women are differentially represented across fields of tertiary study. In 1986, for example, women made up 66 percent of all those studying for arts degrees and 75 percent of all those studying for education degrees, but only 34 percent of those studying for science degrees, 36 percent of those studying for commerce degrees, 24 percent of those studying for architecture degrees and 14 percent of those studying for engineering degrees at New Zealand universities⁹. This at least in part reflects differences in participation in

⁷ While married women earned notably less than unmarried ones, married men were found to earn more on average than unmarried ones.

⁸ Block (1982), p 112.

⁹ Women made up 47 percent of the total student population in 1986.

science, and in particular mathematics, courses at a secondary school level, themselves to some extent a result of differential treatment of male and female pupils by teachers, deficiencies in role models, and the like. There has, however, been a significant increase in female participation in some male-dominated courses, in particular law and commerce, over time.

Table III

Proportion of the Workforce with Specified Qualifications (1986)

| | Male (%) | Female (%) |
|---|-------------|---------------|
| Bachelor's degree | 3.6 | 2.2 |
| Postgraduate degree/diploma/certificate | 1.3 | 0.8 |
| Nursing certificate/diploma | 0.2 | 5.9 |
| Teacher's certificate/diploma | 0.9 | 4.5 |
| Trade certificate | 18.4 | 5.2 |
| Technician's certificate | 1.4 | 0.5 |
| NZ certificate/diploma | 1.4 | 0.9 |
| Undergraduate certificate/diploma | 1.7 | 1.0 |
| 2 or more qualifications | 5.5 | 4.8 |
| Other qualifications | 5.5 | 6.3 |
| No qualification | 55.8 | 62.6 |
| Not specified | 4.1 | 5.2 |
| | 100.0 | 100.0 |

source: New Zealand Census data

The contribution of differences in qualifications to the earnings gap will depend on the extent to which pay rates reflect qualifications. To the extent that pay rates in New Zealand are

compressed¹⁰, differences in qualifications will have a lower impact than otherwise on earnings differentials. On the other hand, where certain qualifications are required for entry to *licensed* occupations traditionally dominated by men (such as some trade qualifications), they may be associated with significant pay differences. However, such differences will effectively be attributable to the statutory provision for licensing, not to the qualification itself.

It is also likely that women's and men's perceptions as to job or promotion opportunities will affect the qualifications for which they study. There may thus be some circularity in arguments about the relationship between women's pay or employment patterns and their qualifications where there are institutional barriers to entry in some occupations. Women's willingness to invest in education will also be affected by the period of time which they expect to spend in the labour force, which will depend at least in part on the flexibility of work arrangements over periods of child-bearing and rearing. Thus Siebert (1988) cites the "atrophy hypothesis", which states that those who plan to work only intermittently will invest less in skills, and will choose occupations in which the penalty for intermittency is relatively low - that is, jobs where earnings increase little in response to experience.

A related issue is women's access to on-the-job training and promotion (or employers' willingness to invest in women workers). This will depend importantly on employers' expectations about the turnover of female relative to male workers. Hyman and Clark (1987) cite sizeable differences in the allocation of full-time study awards by government departments in 1985/86 (although they do not relate these numbers to the male:female employment ratios in these departments). Warren (1988) notes that while almost one quarter of male scientists sampled at the Department of Scientific and Industrial Research had completed doctoral studies while in the employ of the department, and 13 percent had completed other university degrees, completion of doctorates while working for the department was rare for women. Hyman and Clark also note large "imbalances" in access to apprenticeship training, with women dominating only in ladies' hairdressing. (It is not clear how far this is related to occupational licensing in male-dominated areas.)

Ziller (1988) comments that on-the-job management training is typically oriented at skills needed to be learned by male managers (such as listening skills) rather than by women interested in management positions:

"A lot of emphasis is placed in these courses on teaching white male managers how to be sensitive to their staff, how to listen, appraise, give feedback, motivate and develop. This emphasis is at least in part a cost of homogeneity. If these same managers ... had needed from the moment they entered the workforce to gain the

¹⁰ See, for example, New Zealand Business Roundtable (1988a), p 11 ff.

cooperation, respect and support of a diversity of colleagues, they would have had to learn a great many of these skills ... simply in order to make it to the managerial level."

(1988, p 6)

Training programmes targeted at the skills on average lacked by women or minorities are by contrast, she argues, regarded as costly indulgences. This raises questions as to how employers could afford to make "imbalanced" decisions about the sorts of training to offer and which workers to train or to promote (that is, how they could afford to discriminate). This issue is considered in the following section.

In overseas studies, the factor which has typically been regarded as having the greatest power to explain the differential earnings of women and men is the concentration of women in a narrow range of low-paid occupations. The data available in New Zealand are not strongly convincing on this point¹¹, but this may be a result of insufficient disaggregation. Robb (1986), surveying Canadian studies, estimates that occupational and industrial segregation accounts for as much as half of the overall female-male earnings gap, and cites similar results for the United States and Australia. On the other hand, Miller (1987), in a recent Australian study, estimated that occupational segregation accounted for only about 12 percent of the observed earnings gap, suggesting that earnings differences *within* occupations were more important than earnings differences *between* occupations in explaining differences in men's and women's earnings.

Summary

As has been described above, the occupational choices of women - and hence the supply of female labour to different occupations - will reflect such factors as experience and qualifications, access to training, and the compatibility of different forms of employment with child-rearing. These factors will also explain some of the differences in promotion of women to highly-paid positions in both male- and female-dominated occupations. In this sense, concentration of women in certain occupations and in the lower ranks of both male- and female-dominated occupations is not so much a *cause* of the observed earnings gap as a *reflection of underlying causes*. Policies targeted at the earnings of particular occupations are unlikely to remedy their underlying causes, and may thus frustrate attempts to remedy them.

Regressions of earnings on these factors which leave some portion of the earnings gap unexplained have at times been argued to indicate the existence of a further causal factor, employer discrimination. In practice, this is as difficult to test as the proposition that the residual gap is due to natural preferences for certain occupations deeply rooted in the female psyche, leading to persistent "oversupply" of labour to these occupations. Similarly, studies

¹¹ See, for example, Hyman and Clark (1987).

finding no such "unexplained" residual would not necessarily indicate the absence of discrimination. As much of the argument made for the introduction of "employment equity" policies rests on the assumption that discrimination exists and can be combated only by statute, the following section sets out to consider the situations in which employment and remuneration other than on the basis of "economically relevant" factors would be possible.

III DISCRIMINATION IN LABOUR MARKETS

"This report is based upon the premise that discrimination in employment exists in New Zealand and that it is expressed in terms of both remuneration and lack of employment opportunity. The evidence for this discrimination is found in an analysis of the gap between male and female rates of remuneration, and the segregation of groups such as women, and the designated groups, into particular occupations/industries, which are characterised by their low pay."

(Wilson, 1988, pp 10-11)

"We overlook the fact that not every discriminatory action reflects preferences - a dislike of Negroes per se, for example: certain discrimination may come from the rational behaviour of individuals minimizing search costs or confronting real differences in the market, whether that market is free or institutionally constrained. And we overlook the fact that, in a free market, economically irrational preferences will ... impose costs on whoever indulges them. Institutional restraints may, of course, render that indulgence costless to the indulger. If they do, the answer is to lift the restraints and reimpose the costs - in other words, to free the market."

(Williams, 1979, p 43)

In Section II, it was noted that the extent to which differentials in earnings or in employment between men and women were due to employer "discrimination" was near impossible to determine empirically. This section discusses the nature of employer choices, and the labour market conditions under which employers could afford to indulge their prejudices in selecting, remunerating and promoting workers.

Employment, promotion or remuneration decisions which involve apparent "discrimination" against women or minorities may have a number of causes. They may reflect an employer's preferences for a particular sex or race. They may instead reflect the employer's attempts to reduce the information costs of deciding whom to employ or promote, or how much employees should be paid. Thirdly, they may reflect recognition of real (and relevant) differences. Finally, they may reflect the demands of other workers or of consumers for discrimination.

The factors underlying decisions in each of these cases may be deeply rooted. Mary Becker (1986) notes the importance of such factors as the ideology of sexual identity impressed on children from an early age and the tensions that this creates when an individual chooses work traditionally performed by the other sex, the unconscious use of stereotypes, and the disincentives implicit in the hostility of other workers or in sexual harassment. Siebert distinguishes between discrimination within the labour market and discrimination prior to the labour market, quoting Perlman who argues that:

"[I]f all sex differences in labour market outcomes reflect nurture rather than nature, with the exception of jobs requiring physical strength, then almost all negative outcomes for women, which result in lower wages, reflect some form of discrimination."

(in Siebert, 1988, p 5)

However, regardless of where the cause of "discrimination" lies, it will be kept in check to some degree by self-interest, at least where markets are reasonably open and competitive¹². As Walker comments,

"[T]he market looks at individual human beings. It does not care if a person is a woman, a Jew or a black. It cares only that the person is able to perform a particular job better than any other applicant for the job, taking into consideration the costs of finding the best applicant. To the market, people are anonymous so long as they satisfy the ultimate economic arbiter, namely the consumer."

(1984, p 11)

Employers who make employment, promotion or remuneration decisions according to their own preferences rather than the merit of workers will, in a relatively competitive market, lose good workers to employers who make decisions more purely according to merit. Because employers' ability to enhance productivity and restrain costs depends on the quality of their workforces at all levels, discrimination will result in increased costs and reduced profitability, including where it involves under-paying workers. In other words, where employers face competition both for workers and for markets, they are unlikely to be able to *afford* to discriminate against workers on the basis of factors that are not relevant to productivity.

A number of critics of this approach have countered that markets (and implicitly competition) are inherently "unfair", or that if they were "fair", women would be paid more than they currently are. Thus Hyman and Clark (1987), for example, assert a distinction between "worth to the employer" (the market rate) and "work value", arguing that where market factors are allowable as part of the wage-fixing process "past discrimination can be perpetuated" (p 43). This involves enduing the market with attitudes, rather than viewing it as a filter for, and a check on, the attitudes of those using it, and viewing market relationships as coercive and adversarial rather than voluntary and of mutual benefit. As Tuerck writes,

"The problem with this argument is that it confuses the marketplace with the attitudes - admittedly, the sometimes sexist attitudes - that enter into people's market decisions. The market for labour services must accommodate the preferences of millions of workers, employers, and consumers. To suggest that the process by

¹² The capacity of competition to check discrimination has been tested in a number of empirical studies, discussed in Siebert (1988). Overall, the evidence does appear to support the hypothesis that competition reduces discrimination.

which it accommodates these preferences is reducible to some gender-based class struggle is, at best, naive."

(1986, p 521)

On the other hand, the "capture" of regulatory protection by politically powerful groups will constrain the role of competition in penalising discrimination and protecting the interests of those lacking political power.

Further, observation of "unequal" results does not in itself indicate that discrimination has occurred. Williams (1979) emphasises that some apparently discriminatory practices (such as high prices in retail food chains in black ghetto areas in the United States, or failure to employ certain social groups in the presence of a minimum wage law), will in fact be the result of rational decisions based on "full" information. As Block and Walker comment,

"Suppose that in a particular case there are unequal results. We do not immediately conclude that inequity is afoot, but only engage in further research, seeking to uncover the existence of 'inequitable practices'. If none can be shown to exist, we conclude, presumably, that the initial unequal results ... were merely a 'reflection of a non-discriminatory reality'."

(1985, p 28)

The subsequent, and more pertinent problem, is to identify the source of "inequitable practices", and of their capacity to persist in the face of competition for workers from other employers. Such competition is not solely by means of wage rates. Rather, there is also competition between hiring practices and promotion programmes, so that in the absence of regulatory barriers to competition, employers whose recruitment or promotion programmes ignore the (relevant) skills of certain groups of workers (such as women with experience in running a household) will be disadvantaged relative to employers who recognise and develop them. Similarly, there is now evidence in the United Kingdom that employers are competing in terms of childcare and maternity/paternity leave packages, job-sharing and flexible hours (Gapper, 1988). At a more general level, competition for funds on the stock market, and the threat of takeover, place limits on the extent to which a company can afford to let middle or lower-level managers make employment and promotion decisions which reduce the value of the company¹³.

While many of the arguments against reliance on the market mechanism reduce to concerns about ingrained attitudes, which competition has been argued to check rather than to foster, there may be some legitimate concern that the costs of using the market mechanism might enable practices based on prejudice to persist. The two main concerns here are the costs of

¹³ The efficiency of the sharemarket and the associated markets for takeovers and managers are important in that it is through these markets that shareholders in a company can exercise control over managers whose "discriminatory" activities reduce the profitability of a company.

selecting employees and assessing their performance, and the possibility of "monopsony" power on the part of some employers¹⁴. These might be seen as "natural" barriers to competition.

However, the more significant constraints on the market's ability to combat the exercise of racial or sexual prejudice are likely to take the form of regulations and statutes which limit entry or increase costs, not only in the labour market but also in the markets for the goods or services which the employer produces, the capital market, the market for takeovers and the market for managers.

Information costs and "statistical discrimination"

The decisions made by both employers and workers are inevitably based on incomplete information. Employers typically assess prospective employees by reference to such factors as their educational credentials, work experience and age; they may also take account of sex, marital status or race. Decisions made by reference to such proxies for the prospective productivity of a worker will be subject to error, but will rationally be made in this way so long as the costs of making errors (that is, of not employing the best person for the job) are smaller than the costs of seeking out more information about individual candidates. In the process, what is referred to as "statistical discrimination" may occur - judgments which are correct in the sense that a particular group (say, women or Maori) has the characteristics which are ascribed to it, but incorrect for many individuals within the group (Thurow, 1975). In this regard, Williams argues that:

"A person is not prejudiced or unprejudiced. Rather, a person *always* exhibits prejudiced behaviour to the extent that he substitutes general information (prejudgment or stereotypes) - which is less costly - for more costly specific information. What distinguishes among people are their comparative degrees of prejudiced behaviour when facing similar situations."

(1979, p 41, emphasis in the original)

Ziller (1988) notes that in practice employers may persist in using selection criteria or interview techniques based on value systems which are inherently male - at a high cost in terms of the potential productivity of the women or minorities whom they fail to employ or promote. (England (1984) refers to this as "error discrimination".) Similarly, employers basing employment decisions on past experience, for example of women's workforce attachment, may make inappropriate decisions where the pattern of women's participation in the workforce is changing, effectively perpetuating stereotypes. More generally, there may be a tendency to rely on channels of informal information about prospective employees, such as the "old boy network", which are inaccessible to women or to minority groups. These

¹⁴ "Monopsony" power occurs where a single employer dominates the relevant labour market.

problems may be reinforced where employment, remuneration or promotion decisions are delegated to managers who are not directly exposed to market incentives. Attempts by workers to convince employers that they differ from the statistical norm are likely to be costly, placing limits on the extent to which they can circumvent employment or promotion decisions.

In each case, the concern is not that decisions should be fully informed, but that there should be appropriate incentives to seek out an efficient amount and kind of information. This will vary according to such factors as the nature of the job, the skills it requires and the prospective duration of employment, and cannot be determined outside the context of particular market conditions. The primary source of such incentives is the threat of loss of employees or of market share if poor decisions are made. These incentives may be weakened where competition is restricted, either as a result of the natural features of the market involved or by regulation.

Monopsony power

"Monopsony" power is the power of an employer to reduce the wage paid to workers to below their marginal value to the employer without losing them to other employers. It is thus the demand-side version of monopoly power in the supply of a good or service.

While the possibility of monopsony power is critically related to the employment options available to workers and their mobility between jobs, a lack of mobility does not in itself imply the presence or exercise of such power. The availability of feasible alternative employment may be reduced by geographical immobility¹⁵ or limited skills. More significantly, it is likely to be reduced by regulations which artificially constrain access to training and allowable conditions of employment. Because married women in particular tend to have a more limited area of job search than their husbands, following their spouses to new locations rather than being followed, they will often find it more difficult to match their talents to jobs¹⁶. Similarly, to the extent that some jobs are genuinely incompatible with child-rearing, that child-rearing is not shared evenly by spouses, or that the market for

¹⁵ This appears to be decreasing over time. Problems may still arise where, for example, house prices are high in areas of high employment relative to areas of low employment. However, this may more appropriately be tackled by relaxing the rigidities in pay and conditions implicit in national awards or minimum wage laws, enabling regional wage differentials.

¹⁶ However, where an employer transfers a worker to an environment in which it will be difficult for a spouse to find employment, this is often compensated indirectly through that worker's remuneration package (such as allowances for diplomatic postings, or subsidised housing for rural transfers). This reinforces the importance of considering household, not individual, income for married couples in such cases.

childcare services is inadequate for some reason, the range of alternative occupations available to women with children will be limited.

However, as Hutt (1973) makes clear, it is inaccurate to depict the wages of workers with relatively limited alternatives as inherently more "exploitative" than those of workers with more or better remunerated alternatives. Further, true monopsony power - other than that facilitated by government regulations - is rare. The fact that some women may be geographically immobile does not imply a similar immobility of employers. Firms and enterprise agencies seek to utilise local labour pools. The current inflexibility of many employment arrangements with regard to such issues as flexibility of hours or part-time work, which reduce employment options for women with children, would be unlikely to persist in a less heavily regulated labour market. In other words, these "deficiencies" are indicative of the capacity of regulatory power, rather than market power, to enshrine prejudices. Further, the cartelisation of employers with the intent of "exploiting" particular groups of workers (in some "white male conspiracy", for example) would in practice impose high costs on the employers involved - for the same reasons that discrimination on the part of a single employer is costly.

In cases where natural monopsony power does arise, it will most appropriately be handled through legislation such as a reformed Commerce Act, rather than by general wage-setting legislation.

Regulatory barriers to entry

The power of the market to constrain the "discriminatory" practices of employers depends on the regulatory environment. Some forms of regulation are likely to facilitate "non-discriminatory" results. Into this category would fall basic human rights legislation and recognition of rights such as those set out in the Treaty of Waitangi, as well as legislation facilitating the freedom and sanctity of contract and guarding against the abuse of true monopsony and monopoly power.

Other forms of regulation may constrain the operation of markets in a way which reduces the ability of employers and workers to negotiate employment arrangements congenial to both parties. Such regulations typically disadvantage more vulnerable groups of workers - those most often regarded as victims of discrimination. Thus, for example, minimum wage laws have been found in the United States to reduce the employment options available to young black men and women, depriving them of both income and work experience. In other words, there is not only a potentially severe regressive distributional impact, but also a likelihood of adverse long-term social effects, as those denied work become progressively less

employable. Similar effects on employment have been found for regulation of work hours, work practices and costly health and safety regulations¹⁷.

In practice, it appears that such effects are not unintentional. There is a long history of craft unions preventing entry by minorities in order to restrict supply and bid up wages and other conditions of employment. For example, Anderson and Tollison (1984) provide convincing evidence that, contrary to the analysis popularised by the Webbs in the 1920s, the British Factory Acts of the nineteenth century were primarily motivated by skilled male workers wishing to restrict competition from adolescents and adult women, at a time when technological developments were making factory work less, rather than more, arduous and dangerous. Block and Walker (1985) quote a white unionist in South Africa as advocating equal pay for equal work legislation as a better means than job reservation laws of protecting white workers against competition from lower-paid black workers. Williams notes a comparable situation in the United States:

"A wide variety of national and state policies - laws setting minimum wages, the national labour law fostering union monopolies, occupational and business licensing laws, and regulatory laws like those administered by the Interstate Commerce Commission - discriminate against whole classes of individuals. Specifically, they discriminate against latecomers, against those without political clout, against those having little skills and capital - which means, almost by definition, disadvantaged minorities... The basic problem that blacks now face in the United States is not one of malevolent racial preferences per se, though it may have been that in the past. It is, rather, one of government restrictions on voluntary exchange... To the extent that emotionally charged words such as exploitation and racism are to have an economic meaning, they should refer to the myriad of collusive agreements, backed by the government, whereby disadvantaged minorities are subjected to a continuing disadvantage."

(1979, p 48)

In New Zealand, there is a general tendency to perpetuate a view of the employment relation as inherently adversarial and exploitative, de-emphasising both competition between employers for workers and between workers for jobs. This has led to an emphasis on the government, rather than the market, as the primary protector of workers' interests.

A considerable body of legislation, both establishing minimum conditions directly and regulating worker representation and the bargaining process, limits the capacity of employers and workers to negotiate their relationship directly¹⁸. Within the Labour Relations Act, these restrictions include:

¹⁷ A number of these studies are documented in Heldman *et al.* (1981).

¹⁸ See, for example, Brook (forthcoming).

- restrictions on workers' ability to negotiate directly with employers (through provision for compulsory unionism);
- restriction of competition between unions for membership through the registration procedure;
- the minimum union size of 1000 workers (which reduces the potential for workplace unions);
- protection of national-level craft- and occupation-based awards (for example through restriction of the right to institute narrower agreements to unions).

Recent reforms to state sector employment arrangements through the State Sector Act have created a relatively liberal environment for government employees, and the commitment in the Economic Statement of December 17 1988 to a broad review of occupational licensing could be expected to lead to decreased artificial barriers to entry in a number of professions. These moves contrast starkly with recommendations in the area of "dependent" contracting, which could bring more of the self-employed into the award structure, restricting their ability to negotiate pay and work conditions which suit their preferences and circumstances¹⁹. The proposed Employment Equity legislation would similarly impose restrictions detrimental to particularly vulnerable groups of workers.

Government interventions inconsistent with the interests of disadvantaged groups of workers are not restricted to labour market interventions. Any regulation that makes it more costly for companies to operate will reduce their capacity to create or maintain employment. Some aspects of antitrust and business law, for example, may limit the ability of companies to take advantage of new opportunities. The diversion of resources into government sector spending, where the government has no particular advantage in supplying the service involved and accountability is poor, reduces the base from which private sector companies can grow, creating more jobs or better-paid jobs. In this sense, many of the policies implemented by the Government in recent years, such as financial sector deregulation, reductions in import protection and corporatisation of the commercial functions of government departments will be of long-term benefit to employment. The major barriers to these gains being recognised would seem to be continuing problems in limiting public sector claims on resources and legislative barriers to flexibility in labour markets.

Problems with the way in which government services are provided may also reduce the relative capacity of disadvantaged groups to participate in the workforce or improve their employment status. A system of health provision, for example, that generates long waiting lists extends the period for which a person may be absent from employment - potentially

¹⁹ See New Zealand Business Roundtable (1988b).

creating the same sorts of break in experience that have found to be a problem for women with children. A tertiary education system that is inherently unresponsive to the career preferences of students, which operates by quotas and which is likely to contain biases against on-the-job training is similarly likely to work against the interests of disadvantaged groups, and to be protective of discriminatory behaviour²⁰.

Resource management regulations, such as town and country planning laws and building regulations, may also work against the interests of women, for example through the constraints they impose on the creation of workplace childcare facilities.

Summary

While discrimination is inherently difficult to measure empirically, it is possible to identify the conditions under which discriminatory practices can persist - under which employers can *afford* not to employ the best worker for a job because of sexist or racist preferences, to pay workers less than they are worth to the company, to use selection or promotion criteria which contain inherent biases, or to fail to provide working conditions or conditions of employment which will attract and retain good workers (such as flexible hours or childcare facilities). Policies aimed at combating discrimination, or at least its adverse effects, should thus be targeted primarily at the factors which make discrimination possible - at regulatory barriers to entry in labour and other markets, and at any naturally occurring barriers to entry which make it possible for any employer to under-pay workers persistently.

Where such barriers are absent or weak, observed differences in occupational representation or pay rates will clearly be attributable to factors other than employer discrimination. To the extent that these other factors are of concern to society, they are likely to be tackled more effectively in a direct manner rather than through policies targeted at representation or pay. For example, concern that sexual stereotyping is reinforced rather than dampened through the education system is likely to be handled best through education reform, and reform of town and country planning laws may be a more efficient and effective means of encouraging workplace childcare than government fiat. These issues are discussed further in Section V.

²⁰ For example, tenure and promotion systems relying heavily on continuity of service may operate against the interests of women. Answerability to a bureaucracy rather than to the students that the system is intended to serve is likely to reduce diversity and perpetuate the ability of those already established in the system to indulge their own preferences and ways of doing things, and to channel funds accordingly. (See, for example, New Zealand Business Roundtable (1988a).) The reforms proposed at the primary and secondary level by the Taskforce to Review Education Administration (1988) may also be seen as attempting to reduce administrative rigidities likely to have disadvantaged women and minorities in the past.)

The employment equity proposals of the Working Group on Equal Employment Opportunities and Equal Pay are based on the assumption that discrimination exists and is best countered directly by statute. The analysis presented here suggests that while discrimination by employers may well be a problem in New Zealand, the conditions which nurture it may themselves be predominantly statutory. There is therefore some presumption that the Working Group's proposals are mis-targeted.

However, in an environment which is already constrained, it is possible that policies which would otherwise be distortionary will have an impact that is beneficial overall. In the following section, the case that this might be true for the proposed Employment Equity legislation is therefore considered.

IV THE EMPLOYMENT EQUITY PROPOSALS

The test of any government intervention must be that its benefits exceed its costs. Both benefits and costs must be construed widely, taking account of indirect as well as direct effects. This will be of particular importance where the regulation involves the redistribution of income from the population as a whole to a minority, or from one minority to another, or creates significant disincentives for making decisions which would in fact enhance overall welfare.

This section discusses the relative benefits and costs of the proposed pay equity and equal employment opportunities legislation, and of the overall "employment equity" package.

IV.1 Pay Equity

"If we buy the key assumption of comparable worth - that third party observers can tell what jobs are 'really' worth - then our whole economic system should be scrapped. Why let supply and demand determine wages - or product prices, or interest rates, or anything else - if you can tell what things are 'really' worth and establish that equitably?"

(Sowell, 1987, p 116)

"Comparable worth can do as much to reinforce sexual stereotypes as to break them down, and it does not necessarily work to the advantage of women. It is less an attack on discrimination than it is the exploitation of our penchant for fairness and of the ... legal system as a collective bargaining weapon. It is a gimmick for enriching consultants and politically powerful employee groups... It threatens to distort labour markets and to turn societal values away from the principle of nondiscrimination and toward the idea of litigation for profit. It underestimates and undermines the ability of the marketplace to deter discrimination."

(Tuerck, 1986, p 521)

The Working Group's proposals with regard to "pay equity"²¹ are to establish a procedure through which women in "female occupational classes" (those occupations in which 60 percent or more of employees are women) may have their pay evaluated relative to that of comparable "male occupational classes" (where 60 percent or more of employees are men), and adjusted accordingly. This evaluation would be by means of a "gender-neutral" job evaluation scheme, taking account of the skill, effort and responsibility normally required in the job, and

²¹ A number of terms are used to refer to this concept, including "equal pay for work of equal value" and "comparable worth". In the present paper, the term "pay equity" is used in reference to the Working Group's proposals; "comparable worth" is used as a more general term for policies with similar objectives.

the conditions under which it is performed. It would be carried out by "experts" contracted to a "Pay Equity Bureau", established under an "Employment Equity Office", and trained by that bureau.

A number of sources of "allowable difference" in pay are specified, purportedly to take some account of "market" factors. These include skills shortages, some regional differences (but only where the payment of different rates is an "established practice" of a particular employer), and differences that persist after an employee has been transferred to a downgraded position, or the position itself has been downgraded. The procedure would not allow for the reduction of either male or female nominal rates as the result of a job evaluation process.

Pay equity claims could be made once every five years, and might occur under three basic procedures. The first, essentially an "equal pay for equal work" claim²², could be made to the Labour Court by any individual woman (or her union) believing that she is being paid less than a man performing the same or substantially similar work. If her employer employs no men fitting this description, the claim could relate to men employed by a different employer.

Under the second proposed procedure, an individual woman or group of women forming part of a "female occupational class" could file a claim with the Arbitration Commission that they were being underpaid relative to men in a "male occupational class" of equal value. If their employer did not employ anyone in a male class suitable for comparison, such a claim could make reference to a male occupational class employed by another employer. Claims could refer only to paid rates (that is, not to other conditions of employment²³).

Finally, a union with an award or agreement covering an identifiable female occupational class could file a claim with the Arbitration Commission for pay under that award or agreement to be adjusted relative to an award or agreement covering a "comparable" male occupational class. In each of the latter two procedures, disputes over the choice of a male class for the purposes of making a job comparison would be handled by the Pay Equity Bureau,

²² The proposed Employment Equity Act would thus supersede the Equal Pay Act 1972.

²³ A recent ruling in the United Kingdom is interesting in this regard. In what is referred to as the Hayward case, five Law Lords overturned a Court of Appeal decision, and found that the pay of a female cook should be adjusted in line with that of three male craftsmen (a painter, a joiner and an insulation engineer) employed by the same company, despite differences in their non-cash remuneration (the cook receiving paid meal breaks, more sick pay and two days' extra holiday each year).

which would also, in the event of the employer objecting to the results of the job evaluation process, establish a disputes committee for the resolution of differences²⁴.

These proposals differ somewhat from comparable worth programmes implemented overseas²⁵. This is a result both of deficiencies perceived by the Working Group in overseas programmes (the cumbersome procedures required by the relevant legislation in the United Kingdom, and the shortcomings of job evaluation methods used in Australia, for example), and of differences in broader labour market regulation, in particular the expected persistence of the national award system in New Zealand (Wilson, 1988, p 16). In practice, the proposed administrative bodies draw heavily on structures established in Ontario in 1987, with procedures tailored to combine with the New Zealand Labour Relations Act.

Job evaluation

Job evaluations are recommended as a means of measuring the inherent "value" of a job to the employer, with reference to market conditions reduced to an optional extra.

It is sometimes argued that the introduction of job evaluations of the kind proposed by the Working Group would not be fundamentally at odds with the current practice of many employers, who already use job evaluation systems in setting the remuneration of salaried employees. However, in practice fundamental differences are likely.

Job evaluations commissioned by employers as a means of reducing the cost of determining remuneration rates are seldom applied rigidly. The consultants involved typically rely on market forces in identifying and weighting the relevant characteristics of jobs. Where there is a sharp conflict between the results of a job evaluation and prevailing rates of pay, employers will typically defer to the market. As Siebert notes,

"In traditional approaches to compensation systems, job evaluation is given a subsidiary role. Compensation practices are not only concerned with internal equity (the relative value of jobs within a firm), for which job evaluation is suited. There are also aspects of external equity (the value of each job with respect to prevailing market wages) and individual equity (the relation between wages and employee

²⁴ The proposals thus perpetuate a centralised approach to employment issues, on adversarial premises.

²⁵ To date, legislation either directly or indirectly enabling comparable worth claims has been passed in the United Kingdom (where there is also access to European Community law), Eire, France, the Federal Republic of Germany, Canada (including legislation within individual provinces), the United States (principally at a state level; there is still debate as to the applicability of the (federal) Civil Rights Act to comparable worth cases), Australia, Norway, Sweden and Japan. The legislation involved differs substantially both with regard to coverage (for example of private sector as well as state sector employees) and to the degree to which it extends beyond the basic principle of "equal pay for equal work". (See Equal Pay Steering Committee (1987); Robb (1986).)

output, i.e. merit pay). In the past job evaluation methodologies have simply been used to develop 'a surrogate to price jobs where there was inadequate labour market information'. The idea of substituting an independent, internal system for the market is new."

(1988, p 26)

This substitution, which alters the wage structure in a fundamental way so as to benefit certain categories of workers, leads to problems both with regard to the inevitable subjectivity of evaluations ("gender neutral" or otherwise)²⁶, and in terms of conflicts with supply and demand.

The measurement and weighting of job requirements and working conditions is inevitably arbitrary. This becomes evident from the comparison of evaluations of similar pairings of occupations under different schemes. For example, MacKenzie (1987), comparing state employee schemes in Iowa, Vermont and Minnesota in their evaluations of nurses, photographers, beauticians, librarians and social workers, found considerable disparities. While social workers tended to rank highly and beauticians lowly in all states, librarians ranked first in Minnesota but joint last with beauticians in Vermont. Similarly, Aaron and Lougy (1986) report significant differences in the weightings adopted by different evaluation schemes. For example, they found that the weight allowed for the degree of supervision required in office jobs varied between 7 and 14.5 percentage points.

The evaluation process cannot take account of people's preferences for different jobs, or of the valuations placed by workers on the non-pecuniary rewards to employment, which may offset wage factors in determining employment choices. That people do make such trade-offs appears to be recognised by the Working Group. For example, it states that:

"The Group believes that the availability of employment opportunities coupled with the provision of childcare and more flexible work schedules are more influential in women's choice of occupation than pay."

(Wilson, 1988, p 14)

However, these factors do not appear to be interpreted as justifying correspondingly lower pay, and this is reinforced by the insistence that evaluations and subsequent pay adjustments refer solely to pay, not to the entire bundle of conditions of employment²⁷.

²⁶ It is sometimes countered that market solutions are also "subjective" (Mary O'Regan, pers. comm.). However, this is to confuse the inputs to the market, and the regulatory constraints surrounding it, with the mechanism itself.

²⁷ As Siebert (1988) notes, these other factors can be evaluated only subjectively, but this does not render them irrelevant. The dangers of ignoring them have been made clear in the British "Hayward" case (see footnote 23 supra).

Further, payments based on job evaluations are unlikely to take account of the fact that the relative market values of different jobs, particularly in an economy undergoing considerable restructuring, are constantly changing. Major distortions could therefore be expected to arise as a result of the five-year duration of relativities under the pay equity procedures recommended by the Working Group.

More generally, there are considerable problems with justifying an assertion that a panel of experts can in some way assess what is "just" or "equitable". As Sowell has written:

"If somebody has this God-like ability, why restrict it to cases involving jobs that are predominantly male or female? Aren't we all entitled to 'pay equity'? And why not rent equity, tuition equity, vacation equity, and all kinds of other equity? Supply and demand is why not. Employers do not choose salaries in a seminar. They pay what they have to pay, in the competition of the labour market, to get the job done - and usually not a dollar more, if they can help it."

(1987, pp 116-117)

Some societies have, in effect, attempted to institute pay, rent, and all manner of other "equity" by supplanting market transactions with administrative decisions. The costs in terms of low productivity and growth, and capture of the regulatory apparatus by the privileged at the expense of the weak, have been formidable, leading to a gradual abandonment of such policies in predominantly socialist as well as predominantly capitalist economies.

The costs of comparable worth policies

The implementation of the results of job evaluation programmes, if successful in terms of the Working Group's proposals, would lead to an upward adjustment of the wages of women in female occupational classes. As with any legislation that generates or raises a minimum wage, this may be expected to impose some cost in terms of a wage bill that is higher, at least initially, increased rigidity of wage relativities within and between occupations and a reduction in employment opportunities for both women and men.

While recognising that some such costs will occur, the Working Group disputes their magnitude. First, it estimates an impact on the total annual wage bill of between \$230 million and \$700 million or 0.7 to 2.25 percent, with the impact spread differentially among occupations. It is argued that as the scheme would be phased in over three years, and as there is scope for recognition of "allowable differences", the cost, at least initially, would be small. This argument is not developed in the report.

Secondly, it is argued that rather than introducing new rigidities to pay relativities, implementation of the scheme would simply lead to adjustment of old, inappropriate relativities, and "allowable differences" are again argued to introduce a degree of flexibility.

Thirdly, the Working Group "does not believe" (though this belief is not substantiated in their report) that pay equity would create inappropriate labour market signals, encouraging more women into occupations which are already female-dominated, so as to reinforce occupational segregation. In particular, they argue that if pay did operate as a labour market signal, women would not be as concentrated in low-paying occupations as at present²⁸.

Fourthly, it is argued that adverse employment effects would be mitigated by the three-year phase-in period, the fact that coverage is non-mandatory and "the protection against employment substitution that occupational segregation affords" (Wilson, 1988, p 14). On the basis of what are effectively assumptions about the nature and magnitude of costs, the Working Group concludes that:

"[T]he Government has an important role to play in ensuring that there is equity in the process used to determine market outcomes. The Group is concerned that women and other disadvantaged groups bear particular costs because their employment opportunities are limited, and their wages do not adequately reflect their skills, effort, responsibilities and productivity."

(ibid, p 14)

The Working Group's estimate that the implementation of "pay equity" would lead to a narrowing of the earnings gap by between 3 and 6 percent (implicitly their estimate of the impact of occupational segregation on the gap) is in line with estimates overseas²⁹. The magnitude and distribution of associated wage increases would depend on the breadth of claims; while the fact that the proposed scheme is non-mandatory could lead to gaps in coverage, the provision for union claims across an entire occupation could lead to wide coverage on the basis of relatively few claims. The argument that recognition of "allowable differences" will soften both the wage effect and its impact on the rigidity of relativities between awards must be viewed with some scepticism, given the lack of incentives of evaluators operating outside a market context to weight market factors in a manner that reflects likely outcomes in terms of a firm's viability and capacity to offer employment.

Because the concentration of women or minorities into certain occupations is likely to reflect factors other than direct employer discrimination, and because the wage rates in these occupations reflect conditions of labour supply and the demand for the goods or services which the employer is producing, the introduction of pay equity is likely to distort the workings of the labour market. In particular, prevailing wage rates are likely to reflect the degree of

²⁸ Despite a certain inconclusiveness in the available data on this point, the centrality of occupational segregation as a cause of earnings differentials is neither challenged nor analysed.

²⁹ See, for example, Robb (1986) and Siebert (1988).

"over-crowding" as a result of entry barriers to other occupations, the differential compatibility of jobs with child-raising, or differences in qualifications, all of which may or may not reflect more deeply rooted societal discrimination; they may also reflect more basic worker preferences.

Raising wages will encourage more people, both women and men, to seek this kind of work. (Contrary to the assumption of the Working Group, this will hold irrespective of the importance of pay vis-a-vis other factors in determining the attractiveness of a job to women; holding all these other factors constant, an increase in pay will make the overall work package more rewarding, and therefore more attractive.) At the same time, it will raise the required level of productivity at which the employer is willing to hire workers. Faced with a higher prospective wage bill, he or she will essentially face a choice between retaining all workers, incurring higher costs and losing competitiveness, market share and profits, or maintaining competitiveness and unit profits on a lower level of production by laying off the firm's least productive workers. The more intense is the competition that he or she faces in output markets, the more likely is the choice of the second option. The first option is unlikely to be viable beyond the short run. Further, to the extent that other conditions of employment are not fixed by law, the suppression of pay differentials as a result of pay equity claims may lead to these differentials re-emerging elsewhere, for example in working conditions or training opportunities.

In New Zealand, the likely effect would be a reduction in employment opportunities in companies in the unsheltered sectors (those exposed to increasing international competition through the deregulation of the financial market, the reduction of import and export protection and the removal of subsidies), with rather less effect on employment in the sheltered sectors (those producing goods and services that are not traded, and in particular central and local government³⁰). It could thus be seen as reinforcing the current imbalance in the way in which the burdens of economic restructuring have been distributed.

The size of the effect on employment would depend on the responsiveness of the demand for and supply of labour to changes in the wage rate for a given occupation - that is, on the elasticities of demand and supply. In practice, specific evidence on these elasticities, and therefore on the likely magnitude of the employment effects of comparable worth policies, is limited, both at an economy level and for individual occupations, but the impact is invariably

³⁰ In this regard, it may be noted that the constraints placed on the budgets of government departments in the 1988 Budget, requiring that a portion of wage increases in 1987/88 be absorbed, and allowing for no increase in the wage bill in 1988/89, could mean that the implementation of pay equity in government departments would lead to reduced employment opportunities even in this typically sheltered sector.

positive. Robb (1986) cites a United States study which suggested that a comparable worth adjustment of 20 percentage points would lead to a decline in women's employment of only two or three percentage points, but points out that this study related only to the state sector, where wage bill increases could more readily be absorbed because of the state's ability to raise taxes (at the expense, of course, of lower incomes and/or employment elsewhere). She also suggests that the demand for labour is likely to be relatively inelastic in the state sector, so that a given wage increase will have less effect in the state sector than in the private sector.

Bonnell (1987), running simulations on the effect of applying comparable worth policies in Australia, estimates an underlying reduction in employment of 5.76 percent for men and 5.94 percent for women. While in practice these impacts have been masked by increasing female participation in the labour force, the underlying constraint on the creation of employment opportunities is likely to be significant. Gregory and Duncan (1981), for example, estimate that comparable worth in Australia had reduced the rate of growth of female employment by about 1.3 percent per year, relative to the rate of growth of male employment - equivalent to about one-third of the rate of growth of female employment in the period studied.

For New Zealand, a recent Reserve Bank study has estimated that a one percent increase in real wages would lead to a reduction in employment of between 0.75 and 0.9 percent (or 0.6 percent within one year, and 0.8 percent within two years). These figures apply to the workforce as a whole; the extent to which they would differ for women is unclear (elasticities of supply for married women in particular being likely to differ from those for men).

In summary, the evidence suggests that the employment effects as the economy adjusted to pay equity legislation would be of uncertain incidence but unambiguously negative. Over time, the economy's potential for increasing employment and incomes would be further impaired by the distortions that pay equity would involve.

The distribution of the costs (and benefits) of comparable worth policies will depend on the nature of coverage. Where increased wages reduce employment opportunities in the "covered" sector, displaced workers are likely to turn to the "uncovered" sector in search of jobs. In other words, the demand for employment will be increased in firms or occupations where comparable worth claims are for some reason considered infeasible, potentially depressing wages in those occupations. Smith has produced evidence of a sizeable effect of this kind in the United States, finding that:

"[T]he women whose wages are most likely to be adjusted by the comparable worth remedy (those in female-dominated, non-teaching, government jobs) are fewer in number, much better paid, and subject to no greater gender-related wage differentials than the women whose wages are most likely to be adversely affected (those in 'female' jobs in very small firms). Women working for large employers in the private sector, to whom the comparable worth remedy may also apply, have wages that lie between those of the groups above. In general, then, among women in female-dominated jobs, the probability of comparable worth coverage is inversely related to 'need'. It is true that the primary beneficiaries of comparable worth wage adjustments in the covered sectors ... tend to have lower pay than women in nonsegregated jobs *within* their sectors, but the cross-sector effects of comparable worth will tend to exaggerate earnings inequality in society."

(1988, p 238, emphasis in the original)

The nature of coverage and its distributional effects would be likely to differ in detail in New Zealand because of our different industrial relations structures and, in particular, the provision in the Working Group's proposals for unions representing female occupational classes to make pay equity claims on a national basis. However, the voluntary nature of claims under the proposed system would be likely to lead to uneven coverage of female-dominated occupations. While the Working Group rightly recognises the importance of this flexibility for the mitigation of employment effects, it could be expected to reinforce the existing imbalances between the sheltered and unsheltered sectors described above, with unions or groups of female employees in industries already under considerable pressure potentially less likely to press claims³¹.

These effects are not restricted to "women's" jobs, as the creation of unemployment in covered jobs will lead to increased pressure not only on uncovered female-dominated occupations but also on male-dominated occupations (where the entry barriers to these occupations are not prohibitive). Siebert (1988), for example, describes how comparable worth policies, by effectively imposing wage maxima on the male-dominated jobs used to set rates in female-dominated jobs, impose a tax on employees in these jobs, the proceeds of which are picked up by their employers³². Overall, he compares comparable worth with a tax redistributing income from displaced to employed women in female-dominated occupations, and employees to employers in male-dominated occupations (p 31). The overall effect is to depress national income and prospective growth.

³¹ This restraint is more likely in the case of non-union claims or claims under agreements at the enterprise level than in claims to cover national occupational awards, where there is less potential to consider the employment effects of a claim on employment in individual workplaces. It should be noted, however, that this does not imply that wages will as a result be lower for women covered by enterprise level agreements, as other trade-offs (for example through productivity agreements) are more feasible at an enterprise than at a national level.

³² Such maxima arise if the relativities established as a result of a job evaluation limit the subsequent freedom of wages in the male occupational class to rise relative to the newly established wage for the female occupational class.

Finally, the benefits to those covered by comparable worth claims, and retaining their jobs, will be likely to be eroded in the longer run. This is because a successful comparable worth claim will create a "rent" (a profit generated by market outcomes being artificially constrained). Other workers wishing to share in this rent may attempt to raise their chances of entering the occupation, for example by increasing their qualifications above the level required for the job, incurring costs in the process. Incumbents may seek to retain their rents, for example by stricter entry conditions stipulated in agreements, awards or licensing arrangements. The costs of these activities will eventually lead to the dissipation of the rent³³.

This highlights the fact that comparable worth policies are effectively a form of special interest regulation - with government legislation and the court system being used to divert income in favour of a particular group, in this case a subset of female employees. This explains its popularity among employees in the sheltered sectors (particularly government) and unions seeking to raise the incomes of their relatively highly skilled, *employed* members. Like minimum wage laws, the existence of comparable worth legislation in some overseas jurisdictions owes more to these political factors than to the economic or social merits of the concept.

Summary

Comparable worth makes it more difficult for women to act according to their preferences, by increasing competition for positions in female-dominated occupations. In the process, while ostensibly targeted at reducing inequities between occupations, it creates inequity within occupations. Further, while ostensibly intended to reduce disparities in income between women and men, it is likely to increase income disparities between women, as women in more vulnerable jobs - in which school-leavers with low qualifications, women in the regions, Maori women, and women re-entering the workforce after raising children are likely to be over-represented - lose these jobs, and find it more difficult to find alternative employment. To the extent that the proposed legislation makes allowances designed to minimise these effects, the "rationale" for pay equity would seem to be undermined. While the overall effect on employment may be less adverse with incomplete coverage, gaps in coverage are likely to exacerbate the distributional effects of comparable worth policies:

"If women in the covered sector are those most in 'need' - that is, those with the lowest wages or those facing the most discrimination - then comparable worth

³³ For a broader discussion of the impact of price/wage regulation in terms of the dissipation of income, see Cheung (1974).

advocates would almost certainly regard relative gains by those women as socially defensible. But if those in the noncovered sectors are the most needy, both their relative wage reductions and any absolute wage losses they face [through loss of employment] will tend to exacerbate inequality."

(Smith, 1988, p 232)

Similarly, the employers most affected will arguably be those who are least "discriminatory" - those who employ women - with employers in male-dominated occupations (whether this male domination is a result of employer prejudice or entry barriers erected by workers) actually gaining where the creation of effective wage maxima in these occupations diverts income to them from their workers.

Within the New Zealand industrial relations system as currently structured, these effects will be reinforced. Representatives negotiating pay equity claims at a national level may pay little attention to the effects on employment in individual firms. There is likely to be a strong temptation to use pay equity claims to create new relativities between national awards and rigidly perpetuate these relativities, against the interests of male and female workers in both expanding and contracting industries or companies³⁴. There is also some likelihood that the "principle" of pay equity, once accepted with regard to female-dominated occupations, would be extended formally to other forms of occupational "segregation", as there is some logical inconsistency in establishing "acceptable" relativities between some jobs but not others. In particular there could be pressure to extend it to occupational segregation according to race, which is already raised as an issue in the Working Group's proposals for equal employment opportunities programmes. The overall effect would be to increase the rigidity of the labour market over time, without offsetting benefits to the most vulnerable among the groups that pay equity is intended to favour.

³⁴ See Brook (forthcoming) for a more detailed discussion of the costs of rigid relativities between awards in a period of restructuring.

IV.2 Equal Employment Opportunities

"Where did we get the idea that people are homogeneous, and therefore could be expected to be evenly distributed? From intellectuals. Anybody else would have too much common sense."

(Sowell, 1987, p 151)

The terms of reference of the Working Group define equality of employment opportunity to cover all aspects of the relationship between employer and employee, including recruitment policy and practice, remuneration, promotion and training, and relations between employees. Currently, an employee who considers him- or herself to be subject to discrimination in the workplace can seek legal remedies under the Human Rights Commission Act 1977 or under the Labour Relations Act 1987.

The Human Rights Commission Act is aimed at remedies for individual workers subject to discrimination on the grounds of sex, marital status, race, ethnic origin, or religious or ethical belief, and applies to advertising, recruitment, remuneration and the terms of employment, promotion, training and dismissal. This is argued by both the Human Rights Commission and the Working Group to be inadequate for redressing inequality in employment, and a form of affirmative action policy is advocated as a result. Under the Labour Relations Act, there is provision for claims against discriminatory behaviour through the personal grievance procedures³⁵.

The Working Group's proposals are for an Equal Employment Opportunities scheme to cover women and what are referred to as the "designated groups": Maori, Pacific Island people and other ethnic minorities, and people with disabilities. The scheme would be a results-oriented one, aimed both at dismantling "discriminatory" barriers and redressing the effects of past discrimination (Wilson, 1988, p 31). It would be closely modeled on the scheme for state employers set out in the State Sector Act 1988, which is favoured because of its use of reporting by employers, monitoring by a review body - in the proposals, an Employment Opportunities Unit - and provision for enforcement.

Under the proposals, all employers employing more than 50 workers would be required to develop, introduce and implement an equal employment opportunities (EEO) programme. This would be phased in over three years, with state sector employers required to comply within one year, private sector employers of over 500 workers to comply within the second year, and private sector employers of between 50 and 499 workers required to comply by the

³⁵ The Working Group does not address remedies available under the Labour Relations Act - either direct remedies or the more general role of unions in negotiating solutions with employers - in its report.

end of the third year. Private sector companies with less than fifty employees would be free to choose to implement a comparable programme, with the proviso that those choosing not to do so should appoint someone responsible for equal employment opportunities matters.

EEO programmes would be required to include a general action plan for women and the designated groups, and could be extended to other groups (such as the young or the aged) if employers so wished. Consultation with affected employees and their unions would be a necessary part of this process, which would also be assisted by the Equal Opportunities Unit.

These programmes would be developed and implemented over a five-year period. In the first year, a statement of commitment to the principles of the programme would be required, and mechanisms would be established within the company or government department for consultation, education, data collection and monitoring. In the second year, a programme would be established to "eliminate structural barriers", the needs of the target groups in different areas of the employment relationship would be identified, and education on the programme would be continued. In the third year, numerical targets would be set for each of the target groups, and measures identified and set in place to meet these targets, while data collection and education continued. In the fourth and fifth years the programmes would continue to be maintained and developed.

EEO programmes would require approval by the Equal Employment Opportunities Unit, and would need to be submitted annually. A fine of up to \$5000, plus a daily fine of \$50 for each day that non-compliance continued, could be imposed through the Labour Court for programmes not submitted on time, although extensive use of penalties is not anticipated by the Working Group. Employees, prospective employees or their union could also file in the Labour Court for a compliance order under the proposed legislation. Further, employers failing to comply with this legislation would be ineligible for contracts for goods and/or services with the state sector, and could be denied contracts by state owned enterprises or local government authorities if they so wished (Wilson, 1988, p 35).

It is proposed that the EEO legislation would be reviewed at the end of five years.

Some form of equal employment opportunities policy has been implemented in a number of other countries, including Canada, Australia, the United States, the United Kingdom and Sweden. The Working Group's proposals are most closely modeled on the Australian approach, which is preferred to the United States system for its avoidance of fixed quotas³⁶, and apparently also to the relatively passive system in the United Kingdom.

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It should be noted that fixed quotas are only enforced as a final recourse in the United States.

Equality of opportunity and equality of results

"[The] affirmative action programmes that have been or are being introduced in Australia wittingly or unwittingly implement the ideal of equality of result, even though their proponents claim that these programmes implement the ideal of equality of opportunity. The repeated claims that these programmes implement equality of opportunity effectively translate a questionable proposition into an unquestionable truth, thereby pre-empting debate about either ideal of equality. Such debate is necessary because the real direction in which our society is heading is covered by a veil of ignorance."

(Moens, 1985a, p 54)

While the Working Group's proposals are framed in terms of equality of opportunity, and in particular of breaking down "discriminatory" barriers, they are also specified as "systematic" and "results-oriented". They are thus liable to criticisms similar to those made by Moens of the Australian system. As indicated by the discussion in Section III, results will typically be an inappropriate proxy for opportunity, in part because the representation of women and the designated groups across occupations is likely to some extent to reflect genuine preferences. To the extent that they reflect deeper societal discrimination, and even direct employer discrimination, this may be more appropriately tackled by other means than EEO programmes.

Indulgence in judging opportunities by outcomes leads to policies focused on targets for the representation of certain groups, rather than simply on the barriers to entry to certain occupations or promotion within occupations. Equal representation within an occupation is no more an indication that discriminatory barriers to entry are absent than is unequal representation evidence that such barriers exist. Further, while targets specified by employers with the assistance of an Equal Employment Opportunities Unit *sound* less restrictive than the quotas (rightly) condemned in the United States system, it may be argued that in practice the distinction is unclear.

Proponents of targets typically argue that a noticeable increase in recruitment of women in most job categories would be compatible with "merit", for example because of a current failure of employers to give adequate weight to informal qualifications (such as the skills required of a homemaker). Assessment of what constitutes merit must involve consideration of the relevance of particular skills and qualifications to the job involved, weighted in accordance with their importance to this job. In a market context, inappropriate assessments will face the competitive checks on prejudice or statistical discrimination described in Section III. Out of the market context, or where markets are artificially constrained, the problems attributed

to bureaucratic job evaluations in the sub-section on pay equity may arise in determining "merit".

Affirmative action programmes based on quotas have been widely condemned as resulting in appointments purely on the basis of race or sex rather than according to merit, and thus as both inefficient and inequitable in the sense that they are incompatible with ideas of appointment or promotion according to merit. Programmes such as those proposed by the Working Group, based on targets rather than quotas, on the other hand, have been argued to be consistent with equality of opportunity, or appointment according to "true" merit.

Moens argues, however, that the setting of targets could still be incompatible with the merit principle, for example "if the emphasis placed on formal qualifications is unduly mitigated by the giving of inordinate weight to the individual characteristics of the preferred applicant, as opposed to the 'best'" (1985b, p 5), and if there is a shift in emphasis from choosing the "best" person for a job to choosing a "suitable" person for the job so as to meet a target, even if this target is a "flexible" one. Further, he questions the difference between targets and quotas, suggesting that this is a matter of degree rather than of substance:

"[T]he only real difference between a target and a quota is that a target is flexible with regard to the number of less qualified applicants who would be appointed whereas a quota is rigid in the sense that it requires the achievement of a pre-determined number of applicants for a position. Thus, in the final analysis, both target and quota may involve the appointment of applicants who are less qualified than some unsuccessful applicants - the difference is that a quota would produce an even worse result because the evil of less competent or even incompetent people being appointed to certain positions is exacerbated."

(1985b, p 7)

This point is also made by Block and Walker, who regard the switch in emphasis from quotas to "affirmative action" and then "employment equity" as largely a matter of public relations. In criticism of the Abella Report which laid the basis for Canada's "employment equity" programme, they comment that it attempts to avoid dealing with the harm caused to already disadvantaged groups by quota systems by "semantic" means, "substituting the new phrase 'employment equity' for the discredited 'quotas', 'affirmative action', and 'reverse discrimination', even though the former is no more than a synonym for the latter" (1985, p 85).

It is notable that the New Zealand Working Group's report draws heavily on the language of the Canadian legislation, and is rather more vague on the issue of dismantling barriers to female employment (and in particular regulatory barriers to female employment) than on employer commitment to targets. As employers are arguably relatively impotent to dismantle many of the more binding barriers to equality of opportunity - those enshrined by statute -

achievement of targets in New Zealand, even though "voluntarily" set, is likely to involve the abandonment of merit principles in favour of preferential treatment of some form.

A number of proponents of programmes of the kind suggested by the Working Group, including the Human Rights Commission in New Zealand, have argued, however, that recruitment and promotion should be aimed at redressing past injustices as well as overcoming present barriers - in other words, at potentially compensating for past discrimination, as well as averting discrimination in the present. The use of EEO programmes to "redress the effects of past discrimination" is similarly advocated by the Working Group (Wilson, 1988, p 31).

While policies to redress past injustices that have had pervasive and direct effects on the well-being of and opportunities available to some social group may be desirable, they should arguably be designed to minimise the extent to which individuals not responsible, except by lineage, for past injustices are disadvantaged in order to benefit individuals from disadvantaged groups who have not themselves been victims of direct discrimination³⁷. This problem is potentially substantial in the case of affirmative action programmes, and its magnitude will increase with the inclusiveness with which the group to be favoured is defined. A more appropriate policy is likely to be to seek to restore the income base of particularly disadvantaged groups directly, whether through income transfers³⁸ or through the direct restoration of rights to land or natural resources.

A more direct, potentially potent alternative to a system of quotas or targets is the removal or reduction of regulatory barriers to employment (ranging from wage minima to occupational licensing), which continue to protect the interests of privileged groups. This is likely to be both more effective and more equitable than a target or quota system in creating employment opportunities for disadvantaged groups. As Williams comments:

"[T]o acknowledge that today's difficulties have a long history does not tell us what the proper and effective remedies would be. Upon what working principles should they be built? And what might these remedies do to the values of a democratic society? He who says that blacks should be given a competitive *advantage* in the market is, of necessity, also saying that others should be given a competitive disadvantage."

(1979, p 48, emphasis in the original)

³⁷ See Sowell (1982) on two cases in the United States that have tested this point.

³⁸ In the case of education, for example, Sowell (pers. comm.) appears to favour a voucher system subsidising tertiary study at a choice of institutions to quotas for places.

The effects of target-based programmes

While definition of EEO programmes by targets could be presumed to yield a precise means of measuring "success", in practice data on improvements in representation in jurisdictions where some form of affirmative action programme has been applied, and of the side effects, are relatively scarce. Even if such data were available, however, increases in the representation of target groups in certain occupations, or in the higher ranks of those occupations, would not in themselves indicate an improvement in equality of opportunity - for the same reasons that present occupational and hierarchical "imbalances" are not indicative of the degree to which opportunities are currently unequal.

Sowell, differentiating between true equality of opportunity and affirmative action programmes, suggests that in practice, while quotas appear more demanding than basic anti-discrimination legislation (of the kind established in New Zealand under the Human Rights Commission Act), their effects are more ambiguous:

"Discrimination against comparable individuals from different groups incurs liability under the law. Non-discrimination reduces or eliminates that liability, given that the burden of proof is on the employee to demonstrate employer policies that cannot be demonstrated, by hypothesis. In short, equal opportunity policies make the non-discriminatory alternative cheaper to the employer.

"Affirmative action', on the other hand, provides two opposing sets of incentives. An employer's immediate liabilities are lowered by hiring from government-designated groups, but his longer-run liabilities are raised insofar as employees from the government-designated groups can subject him to additional process costs whenever their pay, promotion or discharge patterns do not coincide with those of others or with the preconceptions of government agencies. With the burden of proof on the employer - and often either impossible or prohibitively expensive - it is by no means clear whether he is better off in the long run to have acquired such potentially expensive employees as a means of reducing government hiring pressures... The net effect is not nearly as clear-cut as under equal opportunity policies."

(1982, p 54).

Within universities, for example, Sowell found a number of perverse results, including a lower demand for untested members of designated groups relative to untested members of other groups; an increased demand for *demonstrably* better qualified members of designated groups relative to comparable members of other groups (in other words, a redistribution of opportunities in favour of the least disadvantaged members of the designated groups), and a shift in members of the designated groups out of "up-or-out" tenure-type positions into administrative positions where up-or-out policies did not apply.

More generally, he suggests that the losers under such policies will be concentrated at the lower end of the unfavoured groups, although data on this effect are limited:

"If there is a reluctance to collect official data on the actual impact of preferential policies on the intended beneficiaries, it is virtually unthinkable politically to document the losses of those sacrificed to these policies. But the same economic logic that would suggest that the more fortunate members of the preferred groups are likely to gain most of the benefits would likewise suggest that the least fortunate members of the nonpreferred groups are likely to suffer the greatest losses."

(1988, p 473)

Roberts (1982) documents further unanticipated and negative outcomes, including (in the tertiary education system) the "over"-promotion of relatively unqualified students to the point of generating an unnecessarily high failure rate in the designated groups, resentment leading to the reinforcement of negative stereotypes and intergroup tensions. This effect is also noted by Williams (1979), who in addition comments on the debilitating effect on young blacks of expectations of ascribed rather than achieved status, and by Murray who, in a discussion of affirmative action in the United States, comments that:

"[R]acists given a free hand to promote racism among liberals could not have concocted a more efficient scheme than strong affirmative action... By demanding that universities and employers have 'enough' blacks no matter what, this scheme systematically maximises the likelihood that blacks hired at a given job site, or admitted to a given school, will be less capable than the whites beside them. Years of mismatching have facilitated, if they have not actually caused, the recent racial incidents at the Universities of Massachusetts, Michigan, and elsewhere..."

(1988, p 23)

While Murray's reference is to "strong" - that is, quota-based - programmes, where the adoption of targets represents a divergence from true merit principles, similar, if milder, effects might be expected to result from the implementation of EEO programmes in New Zealand - for example, in the form of a higher incidence of racial and sexual animosity, and sexual harassment, in the workplace. While such behaviour could - and certainly should - be reduced by active workplace education, it is likely to persist so long as the fulfilment of targets is perceived to create new injustices³⁹.

³⁹ A recent survey (Insight New Zealand, forthcoming) suggests a high level of resistance in New Zealand to affirmative action programmes, with 87 percent of respondents (and 88 percent of female respondents) favouring a merit-based approach over special assistance designed to enable women to "compete on an equal basis".

IV.3 Summary: The Employment Equity Package

"Equity or justice ... is clearly process related. Equality of results may be desirable, but if that outcome is achieved by force of law, it may not be just. On the other hand, inequality arrived at by a just process would be just. This paradox lies at the very root of the debate about legislative remedies for perceived 'inequality'."

(Block and Walker, 1985, p 16)

The Working Group proposes to link "pay equity" and EEO programmes under a single piece of legislation and a single bureaucracy - the "Employment Equity Office". The integration of the two is regarded as vital:

"In the past, attempts to address the question of inequality in employment have failed to recognise the relationship between remuneration and opportunities in employment. If there is to be a serious attempt to address the question of inequality in employment, then reforms that address both pay and opportunities are necessary."

(Wilson, 1988, p 9)

Recognition that remuneration and opportunities are related suggests that attempts to improve both by regulating them directly will either fail or impose high costs elsewhere in the economy. While EEO programmes could be seen as a mechanism for reducing barriers to alternative employment for women displaced from female-dominated occupations by the implementation of pay equity, this does not appear to be the reasoning of the Working Group. Further, the proposed EEO programmes, given a failure to address regulatory barriers to entry, would seem a particularly blunt instrument for this purpose⁴⁰.

Further, the Working Group appears to place overwhelming emphasis on outcomes:

"[Employment equity] is a term ... that captures the concept of fairness and justice, and the need to have equality of outcomes, which must be the overriding principles of any scheme to address discriminatory behaviour."

(ibid, p 9)

This derives from an implicit dismissal of the possibility that factors other than discrimination could explain unequal outcomes⁴¹, so that "unequal" becomes equated with

⁴⁰ A lack of analysis of the trade-offs involved appears widespread. For example, Williams (1988), reporting on developments in equal pay in Australia, notes that:

"the view that women should move into non-traditional areas has been challenged recently, with some women's groups claiming women should not be pushed out of their traditional spheres of work and that pay rates for those areas should instead be lifted."

This appears to amount to a belief that women should be compensated for - or protected from - the consequences of their own choices.

⁴¹ These other factors are mentioned in the Working Group's report, and may be seen as given some credence through the provision for "allowable differences" and the latitude potentially allowed employers in setting EEO targets. However, they do not appear to be taken seriously in such general

"inequitable". It also appears to be the result of a failure to consider direct removal or reduction of regulatory barriers to the employment of women and the designated groups as a serious alternative to regulation of outcomes, although the removal of non-regulatory barriers by individual employers is noted as a means of achieving EEO targets.

The sacrifice of economic logic in the name of an egalitarian philosophy can also mean the sacrifice of equity. The EEO and pay equity proposals appear to be based on an analysis which disregards or de-emphasises both the factors underlying differences between men and women in the workforce and the power of market mechanisms to constrain discriminatory behaviour. The result is proposals for new constraints on the ability of these market mechanisms to function, and a likely reduction in overall employment opportunities at a time when labour market constraints on employers' ability to adapt to a changing economic environment is already generating unnecessarily high and persistent unemployment. The costs of these policies are likely to be disproportionately borne by the most disadvantaged members of the "favoured" groups. While some lowering of overall welfare might be accepted if it had beneficial distributional consequences, this does not appear to be the case for schemes of the type proposed by the Working Group.

Where the Working Group recognises that such costs may arise, it argues that they will be mitigated by the relative permissiveness of the proposed legislation - the long phase-in periods, the voluntary nature of pay equity claims and provision for "allowable differences", and the avoidance of quotas under the EEO proposals. However, these costs will only be avoided to the extent that the policies are so permissive as to be utterly ineffective, which is clearly not the intention of the Working Group (and even then there would be a loss to taxpayers in the form of administrative costs).

Gradualism and apparent permissiveness may dampen political outcry, but economic costs are not removed by such devices, merely distributed over time. While a political impression may be created that "something is being done" (and in the process attention may be deflected from other obstacles to the employment of women or minorities), proponents of affirmative action or comparable worth programmes are unlikely to be satisfied. Indeed, the current review itself reflects a dissatisfaction with gradual change, and its tendency to generate demands for specifically outcome-oriented legislation - quick fixes in terms of the "right" number of the "right" people in the "right" place at the "right" pay.

analysis as is provided by the report. If this is because all other factors are regarded as symptoms of more deeply rooted societal discrimination, this is not specified.

Concern that the proposed "employment equity" legislation, if implemented, would lead to a lowering of overall economic welfare, and particular costs to the more disadvantaged members of the target groups, does not imply satisfaction with the status quo. In the following section, some alternative policies are therefore suggested.

V ALTERNATIVE POLICIES

"If women have been discouraged by society or barred by employers from entering certain occupations, the appropriate response is to remove the barriers, not to abolish supply and demand."

(O'Neill, 1984)

Basic equality of opportunity is central to the effective functioning of any democratic society. This does not, however, imply equality of results. Thus any policy aimed at ensuring equality of opportunity should be centred on processes - equality of treatment - rather than on the outcomes of these processes. This directs attention away from such factors as earnings levels and occupational segregation, towards barriers to "fair" treatment in recruitment, promotion, training and remuneration decisions.

As has been argued in Section III, the market places strong constraints on the ability of employers to exercise their personal prejudices in making employment decisions. The strength of these constraints will depend on the regulatory framework in which markets operate. Some regulations will enhance the operation of markets, and at the same time increase the costs to employers of discriminatory action. For example, anti-discrimination legislation of the form embodied in the Human Rights Commission Act may effectively reduce the costs to employers of behaving in a non-discriminatory fashion, as well as highlighting the importance from a social viewpoint of non-discriminatory behaviour. Equal Pay for Equal Work legislation of the form already enacted in New Zealand may provide a helpful elaboration on this theme.

There is also likely to be a role for the government in helping to break down sexual and racial stereotypes that are both inaccurate and detrimental to the interests of women and minority ethnic groups. In part this will be by example - through the way in which its own legislation is framed and public service activities are conducted, and through its own recruitment and remuneration policies⁴². In part it will be through its involvement at the compulsory level of education - for example in breaking down subconscious or conscious discrimination on the part of teachers, in encouraging or mandating the use of non-discriminatory course material, and in

⁴² It may be noted that the requirement - as under the State Owned Enterprises Act - for employers to be "good" employers should not be interpreted as requiring standardised EEO or pay rules. Rather, the most appropriate procedures are likely to differ between enterprises according to variations in conditions and the preferences of employees.

encouraging teachers to broaden children's perceptions of their options. There may also be a case for a more direct public education role.

On the other hand, comparable worth legislation and target- or quota-based employment legislation is likely to restrict and distort market solutions, and reduce the ability of the least-skilled to price themselves into employment. Similarly, legislation which reduces the capacity of employers and workers to negotiate pay and conditions of employment at a workplace level, and artificially restricts workers' ability to choose how they will be represented in negotiations, is likely to hamper the ability of the market to check discriminatory behaviour, and will instead enshrine the prejudices and protect the interests of relatively powerful groups.

A more equitable alternative to "employment equity" policies of the kind advocated by the Working Group may therefore be to upgrade the status of existing anti-discrimination legislation (for example by facilitating group claims to the Human Rights Commission), and to reduce the degree of labour market regulation, through review of both the Labour Relations Act and occupational licensing. Key issues will be workers' rights to determine how they will be represented in negotiating pay and conditions of employment, by whom (including the option of negotiating these issues directly), and at what level⁴³. In the area of occupational licensing, the concern will be to remove or reduce the ability to use statutory licensing requirements as a means of excluding competitors⁴⁴.

The way in which workers negotiate conditions of employment with employers may be expected to have a significant impact on the extent to which these are tailored to meet the special needs of women with, or planning, children. As Hyman and Clark comment in assessing barriers to women's employment,

"The most obvious areas for remedying the problem include better childcare options and maternity leave, more flexible working patterns in paid employment and at home, chances of promotion in part-time work and recognition of the value of work at home."

(1987, p 33)

⁴³ These issues are discussed at greater length in Brook (forthcoming). A high degree of support for the freedom to choose representation, to negotiate directly with employers, and to negotiate at a workplace level, is indicated by two recent surveys of public opinion on industrial relations issues (see Heylen Research Centre (1987) and Insight New Zealand (forthcoming)).

⁴⁴ It should be noted that this does not imply a sacrifice of standards at the expense of consumers. Where particular standards are genuinely important to the quality of service, they may in many cases be maintained through voluntary registration systems.

These are matters which are not readily negotiated at the level of national occupation- or craft-based awards, because of the great variety of circumstances and preferences of workers covered by national unions. This is particularly relevant in the case of unions that are presently male-dominated, where the creation of conditions more conducive to female employment would create a substantial competitive threat. These problems are likely to be more muted in negotiations at a workplace level, but may still be significant in male-dominated workplaces. The possibility of negotiations by individual women, or groups of women, directly with employers may in such circumstances be necessary if contracts tailored to their particular needs are to be possible. Where women do have such freedom to represent themselves, the need for special government involvement in specifying childcare or maternity leave provisions, or "rights" to particular hours or promotion opportunities, will be minimal.

Within the public sector, competitive checks on discriminatory recruitment, promotion and remuneration decisions may be less potent than in the private sector. However, the corporatisation and privatisation processes, and changes in the accountability of core government departments under the State Sector Act, will tend to increase the constraints on discriminatory behaviour by state employers. Where there is competition for employees between state and private sector employers, including potential areas of competition such as education and health services, increased flexibility in the private sector labour market could be expected to increase competitive pressure on state sector employers.

The potential for the competitive threat to constrain discriminatory behaviour by employers will be weakened where growth is low and unemployment high. However, this is not a justification for "compensatory" affirmative action or comparable worth legislation in situations of high unemployment. On the contrary, as the Business Roundtable has argued elsewhere, persistent high unemployment is a direct consequence of regulatory barriers to adjustment within the labour market. Comparable worth legislation in particular could be expected to reinforce the disemployment effect of such rigidities in a period of economic restructuring.

It has been suggested that an alternative to formal "employment equity" legislation may be the inclusion of comparable worth as a matter that can be negotiated between unions and employers under the Labour Relations Act, or, more strongly, to place comparable worth on a par with other required items such as the forty-hour work week. One of the reasons for advocating this approach appears to be to economise on bureaucratic structures, and to ensure consistency with other aspects of labour market regulation. There are, however, problems with both the weak and the strong form of this suggestion. The former would have a potentially adverse effect on vulnerable groups of workers, or workers in vulnerable

companies, where trade-offs between comparable worth and other factors are made at the level of national, occupational awards. The latter would effectively enforce comparable worth for all workers covered by awards or agreements, regardless of its effect on their prospects for remaining in employment, and provide a mechanism for cementing relationships between awards. In the second case in particular, the impact on unemployment would be rather greater than under the system proposed by the Working Group.

More generally, the government policies most likely to result in improved opportunities and earnings for women and disadvantaged minorities are those aimed at promoting economic growth. In this regard, Becker has commented on the contribution of increasing productivity to women's well-being in the 1980s in the United States:

"The Reagan Administration has been criticised by many women's groups, partly because it opposes the Equal Rights Amendment and comparable worth laws. Paradoxically, female workers did very well during the past eight years. Unemployment rates of both white and black women declined, and the differential between the median earnings of full-time employed men and women fell, from 39 percentage points in 1980 to 32 points in 1987.

"This strong improvement in the position of women is all the more remarkable since the gender wage gap remained fixed at about 40 percentage points from the late 1950s to the end of the 1970s, and many people believed the gap would never shrink without extensive government help... The full employment environment, the shift towards a service economy, increased training, and higher labour-force participation all contributed to women's economic advancement."

(1988, p 12)

With regard to training, he notes that women are increasingly planning to spend more time in the labour force, and are investing in training accordingly (Becker, 1987). In the New Zealand context, this raises the question of barriers to entry to training schemes that may be particularly binding for women and disadvantaged minorities. The Business Roundtable's study on tertiary education (1988a) notes that the present, supply-driven system of formal tertiary education is likely to reduce the options available to the relatively disadvantaged, and that present labour market arrangements may create disincentives for "informal" on-the-job training. Reform in these areas may therefore be seen as a prerequisite for equitable treatment of women and disadvantaged minorities in employment.

Policies aimed at widening the opportunities faced by women and disadvantaged minorities by reducing or removing barriers in labour markets (and other markets) which have in the past reduced the costs to employers of unequal treatment, or at educating the public so as to break down irrelevant or unfair stereotypes, will need time to take effect. This may understandably generate impatience and calls for short-term interventions to address the plight of the currently under-privileged.

However, the record of legislative or bureaucratic attempts to "hasten history", by placing "socially desirable" but coercive restrictions on behaviour or outcomes, is far from unambiguously successful. There are considerable risks to such interventions; in particular that they will divert attention from the causes underlying current outcomes, and in so doing perpetuate them. In the process, those whom the restrictions were intended to help are often the first to suffer.

VI CONCLUSIONS

The test that the benefits of any proposed policy should exceed its costs is not purely a test of economic efficiency, as a policy that reduces efficiency (and thus potential output), may be accepted if benefits such as enhanced equity are judged to outweigh the losses. (There will, of course, be a proviso that the efficiency losses associated with such equity gains are minimised.)

Recommendations for comparable worth and employment opportunities programmes have often been couched in terms of an acceptable equity-efficiency trade-off. Their proponents typically play down the magnitude of efficiency costs⁴⁵, and emphasise the benefits in terms of increased "fairness" or equity. This increase in equity is specified principally in terms of outcomes, with the degree of equality of outcomes used as a proxy for the amount of "discrimination" present in labour markets. This tends to lead to an overstatement of the possible benefits. There is also a tendency to understate the equity "losses" that arise where reduced efficiency is associated with the displacement of relatively disadvantaged employees.

The Working Group's report fails to take sufficient account of the complexity of the determinants of apparent "inequities" in the labour market. While treating discriminatory behaviour on the part of employers as the primary target of "employment equity" legislation, it fails to assess the way in which present labour market structures might facilitate or control such behaviour. The analysis presented here suggests, first, that it is inappropriate to infer discrimination purely from inequality of outcomes. Secondly, even if "legitimate" factors explaining differences in outcomes (such as differential work experience or qualifications) to some extent reflect deeper societal discrimination, legislation of the kind proposed is unlikely to be the best means of combating it, in respect of either its efficiency or its equity effects. Indeed, some evidence suggests that legislatively-enforced departures from the principle of appointment on merit promote prejudice.

Comparable worth policies, while benefiting the relatively advantaged members of target groups, are likely to reduce the employment - and therefore income - opportunities available

⁴⁵ See, for example, the Working Group's claims that the overall cost of comparable worth would be small and spread over a long period, and that labour market signals would not be greatly affected, and Ziller's claims (1988) that EEO programmes are essentially efficiency-enhancing.

to the least advantaged members of these groups. In the case of the Working Group's proposals, these will be primarily low-skilled women, female school-leavers lacking formal qualifications, women in depressed regions or women attempting to re-enter the workforce after an absence raising children. In this regard, they reinforce rather than reduce barriers to employment, and self-development through employment, for these women, generating a potentially persistent new source of inequity. Efficiency - and therefore overall economic output growth and the potential to generate new employment - will also be adversely affected.

Where equal employment opportunities policies are concerned solely with opportunities - that is, with processes rather than outcomes - they may raise overall welfare by improving public information about potentially discriminatory practices, and highlighting both "natural" and regulatory barriers to the fair treatment of women or disadvantaged minorities. On the other hand, where they focus primarily on equality or "fairness" of outcomes, as is the case with the Working Group's proposals, and lead to recruitment or promotion decisions based at least in some cases on targets rather than pure merit, efficiency may again be adversely affected. Further, to the extent that such programmes primarily benefit the better-off members of target groups, equity may be reduced rather than enhanced.

While the magnitude of these effects may be reduced under the proposed scheme by its attempts at permissiveness, they will not be dissipated. This raises the question of whether some alternative policy is available which would offer greater welfare gains. It has been argued in this paper that such a policy does exist, in the form of reducing existing regulatory barriers to labour market participation by women and the designated groups, and to the negotiation of employment contracts that meet the needs and preferences of these groups.

Regulatory protections for discriminatory behaviour in the labour market are not, however, limited to specific labour market legislation, such as the Labour Relations Act or statutes supporting occupational licensing. Rather, regulations limiting competition in markets for goods and services will reduce the costs of discrimination to employers, as will regulations which limit shareholder control over managers through share transfers or takeovers. This suggests the relevance of the quality of such widely varied interventions as the Commerce Act, sharemarket and takeovers regulation, and import protection to the opportunities ultimately available to relatively disadvantaged workers.

Some more direct role for the government may be advocated in breaking down societal discrimination, for example through public education, and through the improvement of incentives in the formal education system for non-discriminatory treatment of students. There

may also be a case for reviewing the effectiveness of the present human rights legislation in its role of informing the public and providing more potent checks on its abuse.

To summarise, the Business Roundtable recommends:

- * that the proposals of the Working Group on Equal Employment Opportunities and Equal Pay should not be adopted;
- * that further consideration should be given to a reduction in regulatory constraints on the ability of women and the designated groups to improve their employment and earnings prospects, in the context of:
 - the Labour Relations Act, and
 - the current review of occupational licensing;
- * that consideration should be given to the incentives to educational institutions to reduce long-term societal discrimination, in the context of:
 - the application of the reforms in compulsory education, and
 - the reform of tertiary institutions;
- * that further study should be made of the impact of other areas of economic regulation on the opportunities available to women and members of the designated groups;
- * that the case for further direct government involvement in public education on equal opportunities issues should be assessed.

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