

LEGISLATIVE RESEARCH SERVICE
DEPARTMENT OF THE PARLIAMENTARY LIBRARYAFFIRMATIVE ACTION (EQUAL EMPLOYMENT OPPORTUNITY FOR
WOMEN) BILL 1986

Date introduced: 19 February 1986
House: House of Representatives
Presented by: Hon. R.J.L. Hawke, A.C., M.P.,
Prime Minister

DIGEST OF BILL

Purpose

To require certain employers to promote equal opportunity for women in employment; to establish the office of the Director of Affirmative Action; and for related purposes.

Background

Australia signed the United Nations Convention on the Elimination of All Forms of Discrimination Against Women on 17 July 1980, and ratified this Convention on 28 July 1983. To implement Australia's obligations under this Convention, Senator Ryan first introduced a Sex Discrimination Bill as a Private Member's Bill on 26 November 1981. The objectives of this Bill were to prohibit and eliminate discrimination on the grounds of sex and marital status in various areas subject to Commonwealth jurisdiction, and to promote affirmative action in public and private employment. This Bill was not proceeded with. On 2 June 1983 Senator Ryan introduced the Sex Discrimination Bill 1983 into the Senate, and this passed through both Houses (after redrafting and some amendments) by May 1984. The Sex Discrimination Act 1984 which came into force on 1 August 1984 omitted the provisions for affirmative action which had been included in the 1981 Bill. Instead the Government decided on a course of public discussion and consultation before introducing affirmative action legislation. A Green Paper, Affirmative Action for Women: A Policy Discussion Paper, was presented to Parliament by the Prime Minister, Mr Hawke, on 5 June 1984. This outlined the reasons or need for affirmative action and the proposed elements of affirmative action programs, as

well as the Government's plans for a voluntary pilot program and the establishment of a Working Party with representatives of business, unions, the Government and the Opposition.

An Affirmative Action Resource Unit was established in the Office of the Status of Women to assist the Pilot Program participants from 30 private sector organisations and three higher education institutions. The role of the Working Party was to monitor the progress of the Pilot Program and to advise the Government on the most appropriate form of legislation.

The Pilot Program commenced in July 1984 and at the end of May 1985 a Progress Report was issued. The Report of the Working Party on Affirmative Action Legislation was presented to Parliament by the Prime Minister, Mr Hawke on 28 November 1985. Provisions of the Affirmative Action (Equal Employment Opportunity for Women) Bill, and the other measures outlined by the Prime Minister in his Second Reading Speech, are in line with the recommendations of the Working Party.

Provisions for equal employment opportunities within the Australian Public Service have already been enacted and EEO programs are being established within Public Service Departments. Section 11(1) of the Public Service Reform Act 1984 inserted a new s.22B into the Public Service Act to provide for equal employment opportunity programs.

Outline

The Bill provides that higher education institutions and employers of 100 staff or more will be required to develop and implement affirmative action programs. An affirmative action program is defined as a program designed to ensure that -

- (a) appropriate action is taken to eliminate discrimination by the relevant employer against women in relation to employment matters; and
- (b) measures are taken by the relevant employer to promote equal opportunity for women in relation to employment matters.

Higher education institutions will be required to commence the development and implementation of an affirmative action program for women by 1 August 1986 (or a later date if prescribed). Companies employing more than 1000 will be required to commence their program by 1 February 1987, companies with over 500 and under 1000 employees by 1 February 1988 and companies with over 100 and under 500 by 1 February 1989. Staff employed by subsidiary companies are taken into account when calculating numbers of employees.

Affirmative action programs are to include eight steps which involve

- the issuing by management of a policy statement notifying employees of the commencement of an affirmative action program;
- conferring responsibility for the program on a person with sufficient authority and status within the management to enable proper development and implementation of the program;
- consultation with trade unions which have members in that work place;
- consultation with employees, especially women;
- collection and recording of statistical and other relevant information on the program;
- a review of policies and practices of the employer to identify any discriminatory policy or practices or to identify any patterns of lack of opportunity relating to women;
- setting objectives and making forward estimates; and
- monitoring and evaluating the implementation of the program to assess the achievement of the objectives and forward estimates.

The Bill also provides for the establishment of the office of a Director of Affirmative Action whose functions include advising and assisting employers in the development and implementation of programs, and the issuing of guidelines for this purpose; the monitoring and evaluation of reports

and programs; research, educational programs and promotion of affirmative action through public discussion and community information; reviewing the effectiveness of the Act; and reporting to the Minister.

Employers will be required to prepare a public report and a confidential report on the development and implementation of the program. The Director may request permission from employers to make information from the confidential report available to the public or available for use in a report of the Director. Persons employed by the Director, or the Director, may not reveal information from confidential reports without consent, and the penalties for so doing are \$2500 or imprisonment for three months, or both.

Failure to submit a public or confidential report to the Director as required, or failure to provide further information as required may result in the Director naming the employer, in the Director's Report, as having failed to provide the report or further information. The Director may grant extensions of time to employers for the lodging of private and confidential reports, where such a request has been made and where the Director considers there are reasonable grounds for extending the period.

Main Provisions

For a detailed analysis of the clauses of the Bill refer to the Explanatory Memorandum.

Sub-clause 3(1) provides definitions of terms used in the Bill such as 'affirmative action program' (see Outline above). 'Discrimination' means discrimination as defined in section 5, 6 or 7 of the Sex Discrimination Act 1984. 'Relevant employer' means a higher education institution which is an employer (other than a technical and further education institution), or a person, body or association which employs 100 or more employees in Australia. The term does not include the Commonwealth, a State, a Territory, an authority or a voluntary body.

Sub-clause 3(4) provides that nothing in the Bill shall be taken to require any action incompatible with the principle that employment matters should be dealt with on the basis of merit.

Clause 5 provides that the legislation will apply throughout Australia and the sub-clauses delimit the areas of specific constitutional validity.

Clause 6 requires relevant employers to develop and implement affirmative action programs. Where staff numbers of a relevant employer fall below 100, the legislation will continue to apply to that employer unless or until the number of employees falls below 80.

Clause 7 sets the operative dates for commencement of the programs (see Outline above).

Sub-clause 8(1) sets the eight steps which shall be included in an affirmative action program (see Outline above). Sub-clause 8(2) provides that an affirmative action program may contain any other provision which the relevant employer thinks fit which is not inconsistent with the eight steps or the purpose of the Act.

Sub-clause 8(3) provides definitions of 'forward estimate' and 'objective' as required in sub-clause 8(1)(g).

Clauses 9-12 of the Bill provide for the office, functions and powers of the Director of Affirmative Action. Sub-clause 12(1) provides that the Director shall submit a report to the Minister within six months after each 31 May on the operations of the Director during that year to 31 May. The Director may also submit other reports on matters relating to the operations, powers or functions of the Director (sub-clause 12(2)). Reports are to be tabled in Parliament within 15 sitting days of receipt (sub-clause 12(3)).

Clauses 13 and 14 require relevant employers to prepare public and confidential reports. Public reports are to provide statistics and related information, including the number of employees of either sex and their types of job or job classifications, and an outline of the processes to develop and implement the affirmative action program (sub-clause 13(3)). Public reports are to be made available by the Director to a member of the public on request (para. 15(a)).

Confidential reports are required to provide detailed analyses of the processes undertaken by the employer to develop and implement the program (sub-clause 14(2)). Where this detailed analysis has been provided in the employer's public report, a separate confidential report need not be lodged (sub-clause 14(3)).

Sub-clause 16(1) provides that the Director of Affirmative Action may request in writing that information included in a confidential report be made public or be used in a report to the Minister. Sub-clause 16(2) provides that the employer may consent in writing to such a request making the consent subject to specified conditions.

Clause 17 enables the Director to grant extensions of time to employers for the lodging of reports provided such a request has been received and where the Director considers there are reasonable grounds for extending the period.

Clause 18 provides that, if in the opinion of the Director, the information provided in a report fails to comply with sub-clause 13(3) or 14(2), the Director may by notice in writing request a relevant employer to provide further information within such time as specified in the notice.

Clause 19 provides that where a relevant employer without reasonable excuse fails to lodge a public or confidential report as required, or fails to provide further information under the requirements of clause 18, the Director may name the relevant employer in a report of the Director. This is the main sanction clause against employers in the Bill.

Sub-clause 32(1) provides penalties of \$2500 or imprisonment for three months, or both, for disclosure of confidential reports or confidential information by any person who is, or has been, a Director, a member of staff or a consultant except as provided for in the legislation or to the extent that the information is the subject of a consent under sub-clause 16(2). Sub-clause 32(2) provides that any person who is, or has been, a Director, a member of staff or a consultant shall not be required to provide or divulge in court a confidential report or confidential information except where the information was the subject of a consent under sub-clause 16(2) or where it is necessary for the purposes of the legislation.

Clauses 20-28 concern the appointment, tenure, remuneration and allowances, leave of absence provisions, outside employment, resignation, termination of employment, disclosure of interest and provisions for an acting appointment for the position of Director of Affirmative Action. Sub-clause 21(1) provides that the Director shall

hold office for such period as is specified in the instrument of appointment but not exceeding five years. The Director would be eligible for re-appointment.

Clauses 29-31 provide for the appointment of staff, consultants and advisory committees.

Clause 33 provides for delegation in writing of power or functions by the Director.

Clause 34 makes provision for regulations required or permitted by the legislation.

For further information, if required, contact the Education and Welfare Group or Law and Government Group.

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