

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AFFIRMATIVE ACTION (EQUAL OPPORTUNITY FOR WOMEN) AMENDMENT
BILL 1992**

EXPLANATORY MEMORANDUM

(Circulated on the authority of the Minister for Industrial Relations,
Senator the Honourable Peter Cook)



**AFFIRMATIVE ACTION (EQUAL OPPORTUNITY FOR WOMEN)
AMENDMENT BILL 1992**

OUTLINE

This bill amends the *Affirmative Action (Equal Opportunity for Women) Act 1986* (the Act) to:

- (a) ensure that elected union officials and trainees employed by Group Training Schemes are employees for the purposes of the Act;
- (b) require voluntary bodies with more than 100 employees to comply with the reporting requirements under the Act;
- (c) establish the Affirmative Action Agency as a statutory body with functions and powers defined in the Act; and,
- (d) allow the Affirmative Action Agency a discretion to waive the reporting requirements under the Act in situations where compliance with the Act has been demonstrated.

FINANCIAL IMPACT STATEMENT

The bill will have no significant impact on Commonwealth expenditure.

NOTES ON CLAUSES

Clause 1 : Short title etc.

This is a formal clause which states how the bill is to be cited, and that the *Affirmative Action (Equal Opportunity for Women) Act 1986* is the Principal Act referred to in the bill.

Clause 2 : Commencement

The bill will commence on Royal Assent.

Clause 3 : Long Title

Clause 3 amends the long title of the Principal Act. The long title will now refer to the Act establishing the Affirmative Action Agency, as well as the office of the Director of Affirmative Action.

Clause 4 : Interpretation

The clause amends section 3 of the Principal Act which defines the terms used in that Act.

A definition of 'Agency' as the Affirmative Action Agency is inserted by paragraph (a).

Paragraph (b) includes a revised definition of 'employer' in the Principal Act. An employer is defined to include an individual, body or association that employs certain categories of individuals. The categories included are extended by paragraph (b) and (e) of clause 4 to cover elected trade union officials and trainees within Group Training Schemes.

The Principal Act requires a 'relevant employer' to develop an affirmative action program. The definition of 'relevant employer' excludes voluntary bodies from the requirement to develop a program. Paragraph (c) of clause 4 of the bill will amend the definition of 'relevant employer' to remove the exclusion of voluntary bodies.

Voluntary bodies, such as large non-government schools and charitable organisations will now be required to comply with the Principal Act. Unless there is a reasonable excuse for not complying, a voluntary body may be named in a report before Parliament as failing to comply with the Principal Act.

Paragraph (d) omits the definition of 'voluntary body' as, under the new provisions, these bodies will not be distinguished from other employer bodies under the Principal Act.

Paragraph (e) describes the two categories of individuals, the employment of whom will make an individual, body or association an 'employer' under the Principal Act. An elected trade union official will be taken to be the employee of the trade union. A trainee will be taken to be employed by a Group Training Scheme, where the Scheme receives Commonwealth Government funding and pays the trainee for the services rendered to a host employer. These categories are included to ensure that it is clear who the employer is, in situations where there has been some doubt about the relevant employer.

Clause 5 : Heading to Part III

The heading to Part III of the Principal Act is changed to 'The Affirmative Action Agency'. The old heading for the Part was 'Office, Functions and Powers of Director'. The change reflects the substantive changes to the content of the Part, which now establishes the Affirmative Action Agency as the statutory body with defined functional responsibilities.

Clause 6 : Affirmative Action Agency

New section 8A(1) establishes the Affirmative Action Agency. The amendment means that the Agency will be a statutory body, instead of being the administrative body serving the needs of the Director of Affirmative Action.

The Agency will consist of the Director of Affirmative Action and the staff referred to in section 29 of the Principal Act.

Clause 7 : Director

Section 9 is amended so that the Director has the management of the Agency.

Clause 8 : Functions and powers of Agency

Clause 8 amends section 10 of the Principal Act to transfer the powers and functions of the Director of Affirmative Action to the Affirmative Action Agency.

Clause 9 : Directions by Minister

Section 11 of the Principal Act gives the Minister the power to issue general instructions in writing to the Director of Affirmative Action. As the Agency takes over the powers and functions of the Director, clause 9 requires the Agency to operate in accordance with the general instructions given by the Minister.

Clause 10 : Agency to submit reports to Minister

Clause 10 amends section 12 of the Principal Act so that annual reports, and discretionary reports to the Minister will now be provided by the Agency rather than by the Director of Affirmative Action.

Claus 11 : Agency may waive certain reporting requirement

A new section 13A is introduced into the Principal Act under clause 11.

The section provides the Agency with a discretion to waive the reporting requirements under section 13 of the Act when the Agency is satisfied that:

- . the employer has established an affirmative action program; and,
- . the employer has complied with the other provisions of the Act for a period of 3 years.

The waiver is in the form of a written notice from the Agency which sets out the requirements the employer is excused from reporting on.

Clause 12 : Transitional – acts of Director

This transitional provision allows actions of the Director which were taken before the amendments come into force, to continue to have effect after the amendments, as if they were the actions of the Agency.

Schedule : Consequential amendments relating to the Director

The Schedule omits references to the Director, where they are no longer appropriate as a result of the Agency replacing the Director as the body with statutory functions and powers under the Act. The changes relate to areas of reporting on programs, requesting information, granting extensions of time, failure to submit a report, hiring consultants and the formation of an advisory committee.

The Schedule replaces the word 'Director' with the word 'Agency' in sections 15, 16, 17, 18, 19, 30 and 31. The same substitution is also made in subsections 13(2), 14(1), 33(2), 33(3), 33(4) and 33(5), and in paragraph 32(3)(a). In subsection 33(1) the last occurring reference to 'Director' is replaced by the word 'Agency'.

In subsections 32(1) and 32(2) a reference to a member of staff or consultant assisting the Director is replaced with a reference to a member of staff referred to in section 29 or a consultant engaged under section 30. Section 32 is concerned with the non-disclosure of confidential information.



