

1987

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EQUAL EMPLOYMENT OPPORTUNITY (COMMONWEALTH AUTHORITIES)
BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Employment and
Industrial Relations, the Hon Ralph Willis MP)

EQUAL EMPLOYMENT OPPORTUNITY
(COMMONWEALTH AUTHORITIES) BILL 1987

OUTLINE

1. The purpose of the Equal Employment Opportunity (Commonwealth Authorities) Bill 1987 is to require certain Commonwealth authorities employing 40 or more employees to promote equal opportunity in employment for women and members of designated groups by developing equal employment opportunity programs. Aboriginals and descendants of indigenous Torres Strait Islanders, migrants whose first language is not English and their children, and the physically or mentally disabled are included in the definition of designated groups.
2. The Bill is the third piece of legislation to give effect to the Government's commitment to equal employment opportunity.
3. The Bill sets out minimum requirements for equal opportunity programs to be developed and implemented by the authorities concerned. Provision is also made for reporting on their operation.
4. The authorities concerned are expected to comply with the requirements of the legislation from 1 July 1987 (or such later date as may be prescribed) or, in the case of an authority subsequently coming within the operation of the Bill, from the date on which that occurs.
5. There will be minimal financial impact on statutory authorities as a result of the allocation of some staff resources to equal employment opportunity programs.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clauses 1 and 2

The first two clauses of the Bill provide for the short title and commencement of the legislation. The legislation will come into operation on a day to be fixed by Proclamation.

Clause 3 : Interpretation

Sub-clause 3(1) contains definition provisions. Significant terms are described below.

"Authority" means a Commonwealth authority as defined in the Public Service Act 1922 with the exception of any covered by section 22B of that Act, section 3 of the Affirmative Action (Equal Employment Opportunity for Women) Act 1986, or certain statutory marketing authorities.

"Designated group" has the same meaning as in the Public Service Act 1922 and includes Aborigines and descendants of indigenous Torres Strait Islanders, migrants whose first language is not English and their children, the physically or mentally disabled, and any other class of persons declared to be a designated group.

"Employment matters" relates to a range of personnel and other matters and the definition includes recruitment procedures and selection criteria; promotion and transfer; training and staff development; and conditions of service.

"Program" is defined as an authority's equal employment opportunity (EEO) program designed to bring about the elimination of any employment discrimination by the authority against women and persons in "designated groups". The definition includes the promotion of equal opportunity in employment for such persons.

A "relevant authority" for the purposes of the Bill is an "authority" employing 40 or more employees in Australia.

Sub-clause 3(2) excludes from the operation of the Bill discrimination against a person in relation to employment matters where such discrimination is essential for the effective performance of the duties of a position and where the discrimination is not unlawful under the Racial Discrimination Act 1975 or the Sex Discrimination Act 1984.

Sub-clause 3(3) provides that, for the purposes of the Bill, an authority employs an employee in Australia if the employment contract was made in Australia, even though that employee works overseas.

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

Clause 4 : Extension to certain external territories

Clause 4 provides that the Bill extends to the Territories of Cocos (Keeling) Islands and Christmas Island. It can be extended to Norfolk Island if so prescribed by regulation.

PART II - PROGRAMS

Clause 5 : Relevant authorities required to develop, etc., programs

Under sub-clause 5(1) a relevant authority must begin to develop and implement a program on the "operative day".

Sub-clause 5(2) defines the operative day as 1 July 1987, although a later day may be prescribed. Where an authority comes within the scope of the Bill after that day, then the Bill will apply to it from the date on which that occurs (sub-clause 5(3) makes it clear that this applies equally to new authorities).

If an authority ceases to employ 40 persons in Australia (as required for it to be a "relevant authority"), then, under sub-clause 5(4), it will not cease to come within the Bill until it has fewer than 30 employees in Australia.

Clause 6 : Contents of program

Clause 6 sets out eight specific elements which must form part of an EEO program. Each paragraph outlines certain minimum requirements of a program, which are:

- (a) to inform employees of the contents of the program and the results of any monitoring and evaluation of it;
- (b) to confer responsibility on a person or persons with sufficient authority and status in the authority to be able to develop and implement the program properly;
- (c) to consult with trade unions which have members who will be affected by the program;
- (d) to consult with employees, particularly women or persons in designated groups;
- (e) to collect and record relevant employment statistics and related information;

- (f) to review policies and practices to identify those which discriminate against women and persons in designated groups and any patterns of lack of equality of opportunity for them;
- (g) to set program objectives as well as quantitative and other measures of effectiveness;
- (h) to monitor and evaluate the implementation of the program and to assess both the achievement of its objectives and its effectiveness.

Clause 7 : Regard to be had to program

Clause 7 requires an authority to give effect to its EEO program. The provision also requires any person exercising powers relating to employment matters in the authority to have regard to the program.

PART III - REPORTS BY RELEVANT AUTHORITIES

Clause 8 : Election as to lodgment

Clause 8 relates to the lodging of annual program reports and permits an authority to elect to lodge such reports with the Minister responsible for the authority or with the Public Service Board.

Clause 9 : Annual program report

Clause 9 outlines the reporting responsibilities of authorities.

Under sub-clause 9(1), an authority coming within the Bill must prepare and lodge annual program reports on the development and implementation of its EEO program.

Sub-clause 9(2) sets out the minimum requirement for a program report's contents.

Where a program report which is in accordance with the Bill has been lodged with a Minister, then, under sub-clause 9(3), the Minister is required to present it to Parliament. A Minister may also request a further report if such a program report does not satisfy the Bill's requirements.

Sub-clause 9(4) permits a program report which would be lodged with a Minister to be incorporated in an authority's annual report where the report is to be presented by the Minister to Parliament.

Sub-clauses 9(5) and (6) deal with the final reporting by authorities which cease to come within the Bill.

Clause 10 : Special report upon request

Clause 10 enables either the responsible Minister or the Public Service Board, as appropriate, to require an authority to submit a special report on the authority's EEO program or particular aspects of it. If such reports are lodged with a Minister, they must be presented to Parliament.

Clause 11 : Minister or Board may make recommendations

Sub-clause 11(1) provides that the responsible Minister or the Public Service Board, as appropriate, may, after consideration of a report or special report of an authority, make a recommendation to the authority on action to be taken to improve the effectiveness of its program.

Sub-clause 11(2) requires an authority which rejects such a recommendation to inform the responsible Minister or the Board, as appropriate, of its reasons for not doing so.

PART IV - MISCELLANEOUS

Clause 12 : Directions by Minister

Sub-clause 12(1) provides that a responsible Minister with whom an authority lodges its program reports may give the authority general directions concerning the performance of its obligations under the Bill.

Sub-clause 12(2) provides that a responsible Minister may direct an authority to revise its corporate plan (as defined in sub-clause 12(3)), submitted to that Minister under another Act, to give effect to the obligations of the authority under the Bill.

Clause 13 : Board may issue guidelines

Clause 13 enables the Public Service Board to issue to authorities who have elected to lodge reports with it, guidelines on their EEO programs.

Clause 14 : Report to Prime Minister by Board

Clause 14 requires the Public Service Board to report to the Prime Minister on the operation of the provisions of the Bill to the extent of the Board's involvement.

Clause 15 : Regulations

This clause provides for a regulation-making power.

