Appendix 3

EEO in Australia: Promises and Pitfalls

Robin Kramar

In Australia, the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 provides employers with a framework which allows a variety of approaches to the creation of equal employment opportunity. Most Australian employers have adopted a liberal approach which focuses on the removal of obvious barriers to the employment of women, but fails to transform the social and political structures of organisations. This transformation could be encouraged in the long term by the implementation of more uncomfortable sanctions, and greater involvement of the Government’s Affirmative Action Agency staff in the development of affirmative action plans.

Many countries officially support equality between men and women in employment. International Labour Organisation (ILO) and United Nations’ Conventions establish principles which promote the creation of equal employment opportunity and equal remuneration for men and women. Governments in many countries have sought to put these principles into practice through legislation and a range of labour market and social policies. The creation of equality in employment through equal employment opportunity (EEO) policy is however evasive.

Government policymakers, human resource managers, industrial relations practitioners and employees need to acknowledge that EEO will not be created unless there is widespread organisational transformation. Such transformation requires mechanisms to deal with the competing interests and values of organisational members and an explicit assessment of the way groups of employees have different social and economic power. It also requires an acknowledgement that EEO needs to be considered in conjunction with corporate strategy, labour market and social welfare arrangements and changes in industrial and economic structures.

This paper examines the issue of EEO in Australia and assesses the extent to which the measures developed for its creation have been effective in creating organisational transformation. It highlights the arrangements which are available for the accommodation of competing interests within organisations and the different social and economic interests of employees. It also considers how well these arrangements take into account business policy and economic and social structures. Finally, the paper considers the implications of the arrangements promoting EEO in Australia for other countries.

The paper is divided into four parts. The first part outlines the international conventions which establish the standards for equality in employment, the second part outlines the institutional arrangements established by Australian governments to achieve these standards and the third part assesses the extent to which these arrangements have encouraged the organisational transformation necessary for the creation of EEO. The final part considers the implications of Australia’s experience for other industrialised countries.

An International Standard

Since its establishment in 1919 the ILO has always been concerned with advocating the principle of equality of opportunity and treatment. This principle was regarded as of “special and urgent importance” and its desire to promote women’s rights as workers was reaffirmed in 1944 with the Declaration of Philadelphia which proclaimed:

All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunities (ILO 1987/2).

A number of the ILO Conventions and Recommendations, known collectively as the International Labour Code, address specifically the problems of women workers achieving equal opportunities and equal remuneration under safe working conditions. These include Discrimination (Employment and Occupation) Convention 1958 (No. 111), Equal Remuneration Convention 1951, (No. 100) and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities Convention 1981, (No. 156). The ILO seeks to ensure member states promote equal employment opportunities irrespective of the rate of economic growth and the conditions operating in the labour market. Since 1985 it has sought to assist governments, workers’ and employers’ organisations in these states in developing mechanisms to integrate the employment of women as part of national policies. It has been particularly concerned with developing measures which ensure equal access to training and employment with special reference to issues such as the impact of new technology, equality of remuneration, the improvement of conditions in industries and occupations employing large numbers of women, women working as part-time, casual, contractual, home-based or domestic workers and the participation of women in decision-making at all levels. It acknowledges there are problems in translating the principle of equality into practice and that there is a tendency for the mechanisms which seek to do this to
become isolated from mainstream economic, social and political programs (ILO 1987:1-5).

The governments of member states which ratify the ILO Conventions have a responsibility to undertake legislative and policy measures to promote the principles embodied in these Conventions. As a consequence these measures should influence the way the labour market operates by influencing the behaviour of employers, trade unions, tribunals, governments and employees. The behaviour of these parties should reflect these principles, and as a consequence so should employment decisions about selectivity of hiring, working conditions and pay.

The creation of EEO is, however, not a simple matter. At a conceptual level there are a number of approaches to EEO. Jewson and Mason (1986) indicate there are two approaches: the liberal approach and the radical approach. The liberal approach is concerned with removing barriers, such as discriminatory attitudes, policies and protective legislation so that the most meritorious person is appointed. In comparison, the radical approach seeks to achieve a redistribution of the workforce between industries and occupations as well as a redistribution of rewards between groups. It claims there is a need for personnel decisions, particularly recruitment and promotion decisions, to be "politicised" and as a consequence a need for positive discrimination.

However, Cockburn (1989:214-219) points out this dichotomy is an inadequate way of conceptualising approaches to EEO because the creation of EEO requires accommodating the interests of different groups and changing the structure of employment and selectivity of hiring, working conditions and pay. It requires that equal opportunities has a shorter and a longer agenda.

At its shortest it involves new measures to minimise bias in procedures such as recruitment and promotion ... At its longest, its most ambitious and most progressive it has to be recognised as being a project of transformation for organisations. As such it brings into view the nature and purpose of institutions and the processes by which the power of some groups over others in institutions is built and renewed. It acknowledges the need of disadvantaged groups for access to power ... (But) it also looks for change in the nature of power, in the control of ordinary people of diverse kinds over institutions, a melting away of the white male monoculture (Cockburn 1989:218).

The creation of EEO requires acknowledging that power systems have persisted over long periods of time and that these systems reinforce each other. Cockburn (1989:219) suggests that the achievement of the longer term agenda has at least two necessary conditions: self-organising groups which can put pressure on management for change and provide models of transformed social relations, and a working partnership with a strong trade union. When these groups and the trade unions work with EEO managers there is more chance of changing the mechanisms which reproduce the power relationships between men and women. These groups can seek to change the perception and practice that women bear domestic responsibilities, that they should not hold positions of power, that they should not have different requirements to men and that they occupy marginal positions, such as part-time and casual positions.

Countries have adopted a variety of legislative and policy measures to promote the principle of equality of opportunity and treatment between men and women workers. Equal opportunity and anti-discrimination legislation has been enacted in a number of countries to promote this principle. Anti-discrimination legislation seeks to prohibit discriminatory behaviour, while equal opportunity legislation seeks to systematically remove discrimination from the labour market by requiring employers to take some positive action to ensure their employment policies do not discriminate against women. The provisions of anti-discrimination and equal opportunities legislation vary between countries and as a consequence create differences in the practical scope and potential effect of the legislation. The legislation varies according to the breadth of the definition of discrimination, the scope for affirmative action and the availability of taking class actions. Legislation was first enacted in the United States, with the Civil Rights Act being passed in 1964, Executive Orders in 1965, 1967 and 1969 and the Equal Employment Opportunity Act in 1972. The European Community (EC) has shown a commitment to equal opportunities and has issued legislative directives regarding Equal Pay and Equal Treatment for women. As a consequence Britain developed or amended its existing legislation, the Equal Pay Act 1970 and the Sex Discrimination Act 1975. Both American and British legislation incorporates a broad definition of discrimination, one which includes the principle of indirect discrimination, however, the American legislation provides broader scope for affirmative action and class actions. The American legislation requires private employers with more than 15 employees, federal government contractors, State and local governments and labour organisations with 15 members or employees to voluntarily develop affirmative action policies and programs. It provides for the legitimacy of these plans to be tested in court cases, as well as providing for individuals to take class actions to establish the existence of discrimination, particularly indirect discrimination. These actions can result in employers incurring financial costs for discriminating. In comparison, in the United Kingdom the legislation takes the form of anti-discrimination legislation and only provides for individuals to bring complaints of discrimination. Employers are under no obligation to take pro-active action to promote EEO, although they can provide special training and opportunities for work experience where it can be shown that a certain group is under-represented in a certain area of work (Harris 1990:8-22; Dex and Walters, 1989:205-206; DeCenzo and Robbins, 1988:53-69).
EEO in Australia

Legislation providing for equal opportunity and discrimination-free behaviour is enacted by both federal and State governments in Australia. The Affirmative Action (Equal Employment Opportunity for Women) Act 1986 is the federal legislation covering private sector employers and it requires the 3373 employers and eight trade unions with 100 or more employees and institutions of higher education systematically to remove discrimination from their employment policies and practices.

The Act is at the one time both broad in its conception but narrow in its execution. It is broad in the sense that it requires employers to remove both direct and indirect discrimination from employment policies and practices. Direct discrimination is defined as being readily identifiable and covering any decision or action which specifically excludes a person or group from a benefit or opportunity, or significantly reduces their chances of obtaining it because of a personal characteristic irrelevant to the situation is applied as a barrier. Indirect discrimination is not as easy to detect and is not always the result of conscious intent. It involves instances when requirements and conditions appear neutral, but are discriminatory because they incorporate attitudes or assumptions which disadvantage women.

It is broad in the sense that it provides only general guidelines for developing an affirmative action program. Employers are required to comply with eight steps and to report to a government agency, the Affirmative Action Agency, annually. The eight steps to be followed are specified as:

1. Issue a policy statement
2. Confer responsibility for the program on a senior person
3. Consult with trade unions
4. Consult with employees, particularly women
5. Establish and analyse the employment profile
6. Review employment policies and practices
7. Set objectives and forward estimates, and
8. Monitor and evaluate the program.

Employers can undertake these steps in a way which suits their organisational culture and human resource system. The Act requires that appropriate action is taken to eliminate discrimination by the relevant employer against women in relation to employment matters; and, that measures are taken by the relevant employer to promote equal opportunity for women in relation to employment matters.

The Act therefore provides a framework which can be used by employers to develop either a liberal, radical or transformational approach to the creation of EEO. Although the Act requires employers to set objectives and estimates, employers are not required to set quotas, that is, establish a fixed percentage of women employees which must be attained regardless of the number of qualified applicants available. A quota system is regarded as inconsistent with the basic principle of EEO which is based on notions of merit, skills and qualifications. Consequently, employers can confine themselves to removing what they consider to be discrimination from employment policy and practice and not take positive action to redress past discriminatory practices or to change the values, power structures and culture of the organisation. The Act is narrow in another sense, it provides minimal sanctions: employers who do not submit an annual report are named in the federal Parliament as not complying with the Act.

However, it is important to note that legislation is only one initiative within the Australian Government's National Agenda for Women which seeks to create EEO. This Agenda includes a number of strategies which seek to improve the stock of women's human capital by increasing the qualifications and employment experience of women. These strategies include the Australian Women's Employment Strategy which establishes a set of national goals for improving women's employment options, the National Policy for the Education of Girls in Australian Schools, the National Plans of Action for Women in TAFE and Higher Education, Action for Women: National CES Strategy for Women, and A Fair Go: The Federal Government's Strategy for Rural Education and Training which aims to bridge the problems experienced by rural women in their access to education and training. These strategies conform with the provisions in the ILO's Plan of Action on equality of opportunity and treatment of men and women in employment, requiring priority to be given to vocational and management training for women workers (ILO 1987:63).

Part of the federal Government's attempt to create EEO is the Commonwealth National Child Care Strategy. A four-year expansion program was initiated in the 1988/89 budget. This will result in the creation of more than 50,000 community childcare places, the extension of eligibility for fee relief, the provision of incentives to industry to invest in child care for employees' children and the implementation of taxation arrangements which encourage employers to provide child care for their employees.

The creation of EEO is also supported by measures in the industrial relations arena which seek to develop a more skilled and flexible workforce. In August 1988 the industrial tribunal responsible for determining wages and salaries, the Industrial Relations Commission (IRC), established that increases in wages and salaries or improvements in conditions were allowable if measures were taken to improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid jobs. The measures to be considered included establishing skill related career paths which provide workers with an incentive to continue to undertake skill formation, eliminating
barriers to multiskilling and expanding the range of tasks a worker may be required to perform and addressing any instances where award provisions discriminate against women. These measures have the potential to foster EEO by expanding career paths for women, making provision for workers with family responsibilities, enhancing training opportunities and providing access to higher pay (Department of Industrial Relations 1990:16-17; Kramar 1991:63).

Equal opportunities legislation is the cornerstone of the Australian Government’s attempt to create EEO, however, this legislation is part of a strategy which seeks to integrate women’s concerns into broader employment policy issues. This approach supports Dex and Walters (1989:211) claim that “equal opportunities policies do not operate in isolation but are part of a range of factors which have consequences for women’s occupational status”. The legislation in Australia has the potential to be a powerful force creating EEO by making it compulsory that employers take a pro-active approach through ensuring their employment policies do not discriminate against women.

Approaches to EEO in Australia

Most employers in Australia have adopted a liberal approach to the creation of EEO. Relevant employers covered by the Affirmative Action Act have reported either two, three or four times on the development and implementation of their affirmative action programs. Although there has been a high rate of compliance, in 1991 95 per cent of organisations covered by the Act submitted an annual report (Pratt 1991), the reluctance of many organisations to establish “forward estimates”, and consult with employees and trade unions indicates that EEO is not seen in most organisations as a process of organisational transformation, nor is it seen as necessarily involving major changes in the distribution of men and women between occupations. There have been some instances where organisations have recognised that the creation of EEO does require the redistribution of power between men and women in organisations, the development of measures to accommodate non-work and work responsibilities and the implementation of policies which broaden potential employees’ perceptions of their employment choices. However, preliminary findings of studies in Australia indicate the basic conditions necessary for the creation of EEO are often lacking. Knowledge about EEO is frequently poor among managers, supervisors and particularly among employees while employment policies, especially promotion policies, are based on non-merit criteria.

In complying with the Act most Australian employers have shown that they consider the creation of EEO to be a process to be implemented within the existing power and social structures. This is demonstrated by the fact that only 44 per cent of companies consulted with all, or some, trade unions that were affected by the affirmative action program and less than three quarters, 72 per cent, had consulted with women employees (Affirmative Action Agency 1991:24-25). Even in organisations where consultation occurs it appears this consultation is informal, rather than formal or based on existing consultative structures, and that it usually involves a flow of information between management and employees, rather than a process of joint decision-making (Castleman, Seitz and Cargill 1991:9-13). Despite the government initiatives promoting child care and industrial relations principles promoting flexible work arrangements, employers have been reluctant to introduce policies which enhance the accommodation of work and non-work demands (Wolcott, 1991; Castleman, Seitz and Cargill 1991:24-26). Where arrangements have been made, they have been introduced in order to retain skilled and valued members of the workforce (Castleman, Seitz and Cargill 1991:26; Women’s Bureau 1990:11-15). In the main employers are ambivalent about any corporate responsibility for accommodating workers with parental responsibilities (Wolcott 1990).

The approach of Australian employers to the development of affirmative action programs also indicates that they perceive the creation of EEO as a process of removing obvious barriers to the employment of women. This is reflected in the high percentage of employers who analyse their employment profile (99 per cent) and review their employment policies and practices (83 per cent) (Affirmative Action Agency 1991:27). This latter process is intended to highlight instances of discrimination and ensure the merit principle is the basis of hiring, recruitment, training and promotion decisions. Employers have accepted the fundamental importance of the merit principle in recruitment and hiring, but not in promotion. Although there is evidence to indicate that social networks still influence hiring decisions, non-merit factors such as seniority, sponsorship and unsubstantiated preferences affect promotion processes. Similarly, there is evidence to indicate that some women have problems gaining access to training because supervisors have virtual control over who undertakes the training (Castleman, Seitz and Cargill 1991:17, 21-22, 24; Kramar, forthcoming).

This narrow approach to EEO is supported by the way many employers are restructuring organisations and employment arrangements. Many organisations are being restructured on a divisional basis with less centralised staff structures and flatter organisations (Pratt 1990:22; Affirmative Action Agency 1991:viii). Although these structures are believed to enhance decision-making, there is evidence to indicate they result in affirmative action programs being narrowly and numerically defined. When these structures are associated with the rationality of the corporate planning process, “the interrelationships between
people's work and their domestic, cultural and community activities are ignored" (Business Council of Australia 1990:23). Similarly, employer strategies to create flexible employment arrangements have resulted in the growth in the number of "mobile", low skilled, part-time and casual workers in banking, insurance, computing, hospitality and community services. These workers are predominantly women, and they have little access to training or career paths (McDermott 1990:3, 10).

Some employers have sought to increase the number of women in traditional male occupations by developing recruiting campaigns which target women. Most of these attempts indicate an extension of the liberal approach to EEO rather than a "radical approach" because they rarely take measures to redress past discrimination or positively discriminate in favour of women. These strategies typically involve developing promotional material to promote the idea of women in non-traditional occupations and distributing them at career weeks (Affirmative Action Agency 1990). In the case of Argyle Diamonds, this strategy has been successful in changing the representation of women in a traditional "male" industry, mining. It has resulted in women representing 16 per cent of employees at the minesite and 14 per cent of award employees (Gibbs 1991:1-2). An example of an organisation which has taken measures to redress past discrimination is L.M. Ericsson Pty Ltd which offers 10 female engineering students vacation employment and the prospect of permanent employment on the completion of their studies (Pledger 1991:4).

One of the requirements for the successful creation of EEO is a knowledge among employers and managers about the nature of EEO and affirmative action. Some organisations have developed innovative techniques using videos and training programs to communicate their commitment to EEO (Affirmative Action Agency 1990), however, it appears that there is a low level of understanding of affirmative action among employees, and this understanding is inversely related to organisational status. Even in organisations where senior management have a strong commitment to EEO, knowledge and information does not necessarily flow down to lower levels in the hierarchy (Castleman, Seitz and Cargill 1991:13-15; Employment Research Group 1991). The most successful forms of affirmative action training were found to have good presentation styles, relevance to employee's own situation and concerns and provision for meaningful and ongoing interaction between employees and trainers (Castleman, Seitz and Cargill 1991:16).

Although the Affirmative Action Act has the potential to take into account the different interests of men and women and to alter the social structures within organisations, this has not happened yet. EEO has been interpreted in a narrow way by most employers and its creation has been hampered by the failure of many Australian organisations to involve women and trade unions in the development of an affirmative action plan. There is no indication of transformational change taking place in employee values or organisational arrangements, instead there has been some incremental change in some organisations.

**Implications for Other Industrialised Countries**

The Australian approach to EEO provides a sound model for other countries. It requires employers to take a pro-active approach by complying with the eight steps. These eight steps provide a structure for the identification of sources of indirect and direct discrimination and the development of policies which are consistent with the structure and business objectives of the organisation. It can achieve this through consultative processes and through regular reviews of the achievements of the plans. The legislation allows employers to take a variety of approaches to the organisational change required to create EEO. Most Australian employers have adopted a liberal approach to EEO and followed an incremental approach to organisational change. There has been a growing understanding that EEO is about using the full potential of the workforce as well as about social justice, that it is about both equity and efficiency (Affirmative Action Agency 1991:viii).

However, after five years the Act has been unable to transform the values and structures of organisations so that power is redistributed more equitably between men and women. There is evidence that most employees are unfamiliar with the concepts of EEO and affirmative action. Although some initiatives have been taken to accommodate domestic responsibilities through the establishment of childcare centres, these initiatives are the exception rather than the rule and they are still seen as a women's issue not a family issue.

There are a number of developments which could deal with these issues. A review of the Affirmative Action Act is being undertaken by the Affirmative Action Agency and it is examining matters such as the extent to which employers covered by the Act have developed quality affirmative action programs and whether tougher sanctions should be applied (Office of the Status of Women 1991:3). One of the ways the Affirmative Action Agency seeks to provide models of excellent affirmative action initiatives is by providing annual awards to organisations which have developed outstanding affirmative action policies and through sponsoring a longitudinal study in nine companies of the processes and outcomes of developing and implementing affirmative action programs. However, real transformational change might only be encouraged by the implementation of more uncomfortable sanctions, such as financial penalties and more