

# Chapter 1

## Introduction

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*It is obvious that no matter how complete the theory may be, a middle term is required between theory and practice, providing a link of transition from one to the other. For a concept ...which contains a general rule, must be supplemented by an act of judgment whereby the practitioner distinguishes instances where the rule applies from those where it does not.*

(Kant, 1793; quoted in Reiss, 1970)

### 1.1 Affirmative action in Australia

In October 1986 the *Affirmative Action (Equal Employment Opportunity for Women) Act* was passed by the Australian Federal Parliament. The Act was a public policy response to the perceived problem of unequal employment opportunities between women and men in Australia (O'Donnell & Hall, 1988). Throughout the 1970s and the early 1980s there had been growing pressure on successive Australian governments, from both domestic and international sources, to take some action to ensure all participants in the work force enjoyed equality of opportunity and treatment (Kramar, 1991). Two years earlier, the federal Labor Government had passed the *Sex Discrimination Act, 1984*, to prohibit discrimination on the basis of sex or marital status in the workplace. The deficiencies of the sex discrimination legislation as a means of redressing inequalities of opportunity were recognised by policy makers at the time, and led to the development of the affirmative action legislation.

The (sex discrimination) legislation does not of itself assist in breaking down the high degree of occupational segregation which exists in the Australian work force. Nor does the legislation of itself require the examination of employment policies and practices to see if they are discriminating against women.

(Department of Prime Minister & Cabinet, 1984a: 14)

The Affirmative Action Act was formulated as a means of overcoming these deficiencies. The intent of the legislation was to dismantle the discriminatory barriers which limit opportunities for women in the workplace (Davis, 1990). Equal

employment opportunity was the stated goal of the legislation and ‘affirmative action’ was the name given to interventionary practices designed to achieve the goal.

The affirmative action legislation was developed in consultation with employers (including peak bodies of employers such as the Business Council of Australia) and the peak council of Australian employees, the Australian Council of Trade Unions (ACTU) (Thornton, 1990). As is generally the case with laws attempting to regulate organisational behaviour, the legislation outlined broad principles rather than dictating specific behaviours (Edelman *et al.*, 1991). The legislation appeared to recognise the diversity and multiplicity of disadvantage in employment. Rather than taking a very prescriptive approach, the legislation left it to employers to make judgments about how to translate the equal opportunity principles embodied in the legislation into practice. Implicit in the legislation is the assumption that an organisation is in the best position to determine the form affirmative action should take in its own workplace. Many different types of affirmative action policies have been designed and implemented by organisations since the enactment of the legislation (Kramar, 1995).

The Act is administered by the Director of Affirmative Action and requires all private sector employers, community organisations, non-government schools, unions and group training companies with more than 100 employees and all higher education institutions to implement an affirmative action program (section 3(1) of the Act) and to report to the Director annually<sup>1</sup> (section 13 of the Act), outlining their programs.

While the legislation has a strong self-regulatory component (Braithwaite, 1994), there are sanctions for non-compliance with the legislation. Initially, the only sanction associated with the legislation related to the reporting requirement of the legislation. Those employers covered by the legislation, but not submitting a report to the Agency, could be named in a report to the Minister for Industrial Relations for tabling in parliament (Section 19(1) of the Act). In 1992, the Federal Government amended the

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<sup>1</sup> In October 1996 the Affirmative Action Agency announced that organisations which have had high quality programs for a number of years will no longer have to submit a report to the Agency annually.

sanctions such that companies breaching the reporting requirement of the legislation would also be ineligible for federal government contracts or specified government assistance (Affirmative Action Agency, 1992b).

Further amendments were made in 1994. Recognising that employers could be complying with the reporting requirement of the legislation, but in reality doing little or nothing to improve employment opportunities for women, the Affirmative Action Agency introduced a system of 'minimum performance standards' in 1994 (Affirmative Action Agency, 1995). Organisations submitting reports in which little detail of their affirmative action efforts is provided are deemed to have failed to meet the reporting requirement of the Act, and so face the same sanctions as those not submitting a report to the Agency.

Compliance with the annual reporting requirement of the legislation has been very high. From 1987 to 1994 between 96 and 99 per cent of employers covered by the legislation submitted reports to the Agency annually (Affirmative Action Agency, 1994). With such high figures of reporting to the Agency, it would seem that companies are complying with the letter of the law (Braithwaite, 1993).

Our knowledge of how organisations have translated the ideals of the legislation into practice and how these have been received within the organisation is less developed, and not as well understood. Little systematic empirical research has been conducted into the nature of the affirmative action programs being implemented within these organisations. In addition, how those affected by the policies, that is, employees, perceive their employment opportunities has not been adequately researched.

## **1.2 The issue of effectiveness**

As a public policy response to the perceived problem of unequal employment opportunities in Australia, the affirmative action legislation has attracted some controversy (Poiner & Wills 1991). In the period prior to the enactment of the

legislation, it was clear there was some resistance from employers to the notion of a legislative requirement that private sector employers with more than 100 employees be compelled to develop an affirmative action program and report on it annually to the Agency (Schuler *et al.*, 1992). The question of the ‘effectiveness’ of legislation such as this in achieving the goal of equal opportunity generated considerable debate from the outset.

Included within the legislation is an evaluation requirement. Specifically, section 10 of the Act requires the Director of the Agency to carry out evaluations concerning:

- the effectiveness of affirmative action programs in achieving the purposes of the Act; and
- the effectiveness of the Act in achieving its purposes.

To fulfil these requirements, the Affirmative Action Agency conducted an Effectiveness Review of the legislation in 1992 (Affirmative Action Agency 1992b). The major findings of this Review were that:

- a) the legislation has been successfully implemented, as evidenced by the high rates of compliance with the reporting requirements of the legislation;
- b) there is strong support in the community for the principle of affirmative action, although this ‘in-principle’ support is not well supported by knowledge of affirmative action in practice;
- c) the rate of progress of affirmative action is very uneven. While some organisations have well-developed affirmative action programs in place, others remain largely untouched by the legislation; and
- d) there is still economic and social inequality between Australian women and men.

It is the last point — that there is still economic and social inequality between Australian women and men — which is often focused on when reviewing the impact of affirmative action (Bagnall, 1994; Maslen, 1994; McIntyre, 1994). Much of the discussion concerning the ‘effectiveness’ of affirmative action has been based on quantitative measures comparing various dimensions of women’s and men’s employment status. For instance, Still (1993) cites the lack of women in senior management to argue that affirmative action legislation has not been effective. When

the legislation was implemented in Australia in 1986, women represented 51 per cent of the Australian population and 40 per cent of the paid work force; but less than two per cent of senior managers in the private sector in Australia. In 1992, after six years of the legislation, women represented 42 per cent of the paid work force but they had not increased their representation in senior management in the private sector (Still, 1993). According to Still (1993: 26) 'women were being given less opportunity in management in the private sector despite equal opportunity and affirmative action provisions'.

Still's research has generated considerable coverage in the popular press where much has been made of the apparently small changes achieved in women's employment status since the affirmative action legislation was implemented. Other measures which are often cited as evidence of the 'failure' of affirmative action include the continued wage differentials between women and men and the occupational and industrial segregation still characterising the Australian work force (Bagnall, 1994; McIntyre, 1994).

While analyses of aggregate employment figures, wage differentials and the gender segregation of the work force have been crucial in demonstrating that women continue to be disadvantaged in the workplace relative to men and in keeping the issue of women's employment status in the public arena, these numbers are, by themselves, not particularly informative (Poiner, 1995). These numbers are not able to inform management about the nature of the barriers that continue to limit women's employment opportunities in their organisations, nor can they provide insight into how to address the problems women encounter or suggest how the affirmative action programs in their organisations could be made more effective. Addressing these issues requires the incorporation of more qualitative information and experiential evidence which may expose 'the nature and complexities of discriminatory processes' (Poiner, 1995: 66). Newman (1995) maintains that we can bring into focus many of the hidden dimensions of organisation which are masked by the apparent rationality of organisation structures by exploring women's experiences.

In heeding Newman's (1995) argument, it is important to recognise there are no direct lines of truth to these experiences. There is no 'objective reality' to these experiences that we can tap into; all such experience is mediated by the individual and their way of viewing the world (Mullins, 1993). It is the individual's perceptions of their experiences which we may be able to access and explore, not the experiences *per se*. Employees' perceptions of organisational practices, such as affirmative action, are critical data in understanding organisational behaviour (Schneider *et al.*, 1980). The insights gained from exploring employees' perceptions may be instrumental in enhancing the practice of affirmative action and so developing more effective means of addressing inequality in the workplace.

### **1.3 Research objectives**

Although the affirmative action legislation has been in place for ten years, little empirical research has been conducted into how affirmative action has been implemented within organisations covered by the legislation or what the consequences of the affirmative action policies have been. The annual reports and publications of the Affirmative Action Agency contain some examples of affirmative action initiatives taken by specific organisations, but they do not provide a detailed account of the types of affirmative action policies commonly implemented by organisations or the incidence of those policies. The research reported in this study explores some aspects of affirmative action for the purposes of shedding light on how it has been practised and what have been the responses to affirmative action of those who have been touched by it.

'How have organisations implemented affirmative action in their workplaces?' 'Are there particular affirmative action policies which engender greater/less support from employees?' 'How do the proposed beneficiaries of affirmative action — women — perceive their employment opportunities?' are relevant questions in this context. The information gained from exploring such questions should enhance our understanding of

the reality of affirmative action within organisations. How has it been practised and how effective has it been?

The sheer volume of affirmative action policies implemented by the more than 2000 organisations covered by the legislation renders a description of all of the individual policies infeasible. A framework for categorising (a typology of) affirmative action policies that adequately reflects the variety of policies is a means of presenting this descriptive information. The purpose of such a framework is to enhance our understanding of the form compliance with the legislation has taken.

Employees' perceptions of the various types of affirmative action policies may provide some insight into the practice of affirmative action and guidance on how to improve the implementation of affirmative action within organisations. As Schein (1994: 51) notes 'empirically grounded research can be a powerful tool for change'. While there are other approaches that could have been employed to examine the practice of affirmative action, the value of this research with its focus on perceptions lies in its exposure of the views of those affected by the legislation.

More specifically, the objectives for this research were:

1. to develop a typology of affirmative action policies implemented by organisations covered by the legislation;
2. to ascertain how employees (both female and male) within companies implementing affirmative action programs respond to the various policies and whether there are particular types of affirmative action policies which have been viewed more favourably than others;
3. to examine employees' perceptions of their employment opportunities — in particular, do women perceive their employment opportunities to be equal to those of men?; and

4. from the extant literature and the insights gained from employees' perceptions. to identify possible strategies for improving the practice of affirmative action within organisations.

There are quite distinct groups of employers covered by the legislation — private sector employers, community organisations, non-government schools, unions and group training companies with more than 100 employees and higher education institutions. Recognising that the practice of affirmative action in one group may be quite different to the others, the current study is confined to the practice of affirmative action in the private sector. It is in this area that the legislation attracts the most attention and where aggregate employment figures suggest there has been so little change (Still, 1993; Bagnell, 1994; Hede, 1995).

#### **1.4 Overview of thesis**

In Chapter 2, background information is presented on the historical context from which the affirmative action legislation emerged and the form the legislation has taken, particularly with regard to the regulatory requirements facing employers. An overview of the debates surrounding the concept of equal opportunity generally and affirmative action as a response to inequality of opportunity in the Australian context is presented in Chapter 3. From this overview it is clear that little is known about how Australian organisations have attempted to translate the principle of equal opportunity into practice via their affirmative action programs. In Chapter 4 a profile of the types and incidence of affirmative action policies implemented by Australian organisations over the period 1990/91 to 1992/93 is developed. From this profile it is possible to discern the relative frequency of the types of affirmative action policies organisations have implemented.

In Chapter 5, previous work on the question of the 'effectiveness' of the affirmative action legislation in improving employment opportunities for women is reviewed. While it is recognised that monitoring aggregate employment figures is an important process for monitoring women's employment status, it is argued that the inclusion of

action from the perspective of those affected by it, case studies were developed of the practice of affirmative action in companies with apparently comprehensive affirmative action programs in place. Through the use of case studies, it was possible to deal directly with employees to ascertain their perceptions of the affirmative action policies and their employment opportunities.

In Chapter 6, the basis on which the case study organisations (Technico, Pharmsco and Healthco) were selected is presented, as are overall employee and occupational profiles of the organisations. Both qualitative and quantitative techniques were employed in this stage of the research to gauge employees' perceptions of affirmative action as practised in their organisations and their employment opportunities. Chapter 7 contains a summary of the qualitative interviews conducted with employees in each of the organisations. To establish how commonly held were the interviewees' perceptions (to 'quantify' the qualitative findings of the interviews), surveys were conducted in the case study organisations. In Chapter 8, the findings of the surveys carried out in the organisations are presented. Conclusions and implications of the research for the practice of affirmative action are given in Chapter 9.

Overall, the purpose of the research reported here was to explore the practice of affirmative action in Australia in the 1990s. In classifying the affirmative action policies of a large sample of organisations (288) reporting to the Affirmative Action Agency according to a five category typology, the variety of affirmative action policies has been reduced to more readily comprehensible proportions. In three case study organisations identified as apparently complying with the spirit of the legislation at a high level, employees' perceptions of affirmative action and their work environment are examined. The purpose of this was to identify factors impeding the practice of affirmative action and to identify practical strategies for crafting more effective affirmative action policies.

## Chapter 2

### **Affirmative Action — An Historical Perspective**

*To understand a public issue or crisis, it is advisable to begin with the historical context from which the issue emerged. (C.Wright Mills, 1959: 151)*

#### **2.1 Introduction**

Despite considerable political controversy in the years preceding its enactment, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* was passed by federal parliament in August 1986 (Poiner & Wills, 1991). The intent of this legislation was ‘to begin the slow process of dismantling deeply embedded discriminatory barriers to provide increased opportunities for women at work’ (Davis, 1990: 4). In particular, attitudes and assumptions incorporated into rules, policies and practices in the workplace which denied women the same opportunities as men were to be targeted. The current review examines the historical context which led to a situation where legislative redress was deemed necessary if equal employment opportunities for women were to be attained.

In this chapter, both the national and international climates prior to the enactment of the affirmative action legislation in Australia in 1986 are examined. In the following section, women’s participation in the paid labour force in Australia from 1902, when women<sup>1</sup> were granted the right to vote in federal elections, is reviewed. In section 2.3, women’s work experiences in the post-war period in Australia are described. Sections 2.4 and 2.5 detail the occupational and industrial segregation which characterised the Australian labour force prior to the enactment of the affirmative action legislation, while the issue of equal pay in the Australian context is covered in section 2.6. The legislative actions taken to address the issues of equal employment opportunities and

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<sup>1</sup> Aboriginal and Torres Strait Islander women (and men) in Queensland and Western Australia continued to be denied the right to vote (Miller, 1988).

equal pay in other western countries are summarised in section 2.7. The focus is on the experience of other western countries, because it was in the west that significant moves to redress discrimination and inequality of opportunity were gaining momentum through the 1970s and 1980s. In sections 2.8, 2.9 and 2.10, the sex discrimination legislation and affirmative action legislation in Australia are described, with particular emphasis on the regulatory requirements facing employers. An important factor impacting on efforts to improve employment opportunities for women in Australia was the federal government's ratification of ILO Convention 156, Workers with Family Responsibilities in 1990. The industrial ramifications of this ratification, with particular reference to the reinforcing nature of the anti-discrimination, affirmative action and industrial relations legislation relating to equal opportunity in Australia, are reviewed in section 2.11.

## **2.2 Australian women at work — 1900 to 1945**

Prior to World War II, women were precluded from a number of occupations through legislation enacted at both the state and federal levels (Connell, 1980; Human Rights & Equal Opportunity Commission, 1992). Some authors attribute women's exclusion from various occupations to efforts by the working class in the nineteenth century to ensure that working housewives could *not* enter the paid labour force, thereby limiting the supply of labour and increasing the price of labour (wages) (Connell, 1980; O'Donnell & Hall, 1988). There is considerable controversy surrounding the reasons why such action was taken. Humphries (1977) argues that the exclusion of women from many trades in the nineteenth century was in fact a defence of the family. This line of reasoning is based on a view of the family as the means by which the newly-created working class attempted to manage the great strains it faced as a consequence of the changing economic system. The full-time housewife was an integral part of the support system developed to cope with the move into paid work by other members of the family (Curthoys, 1986).

A somewhat different view is that women were excluded from traditional male trades not because of action taken by the working class to protect the family, rather, it is seen as a concerted effort by men to dominate women. Hartmann (1975) interprets the exclusion of women from the relatively higher paid male trades, and hence the continued presence of women in the home, as exploitation of working class women by working class men. This view suggests that legislation to exclude women from certain trades was a product of male worker sexism; that is, attitudes that women were innately inferior to men (Hartmann, 1975).

As a consequence of the various awards and state factory regulations limiting women's access to certain occupations (whatever their cause) in the early part of the twentieth century women could not obtain apprenticeships as bakers, breadcarters, broomworkers, butchers, coachmakers, colliers, coopers, electrical tradespersons, farriers, millers, paperhangers, pastrycooks, plumbers, signwriters, tilers, tip-carriers, tuck-pointers, undertakers, woodworkers or gold, silver or tin miners. As well, women were prohibited apprenticeships as cycle or motorcycle makers, or as engine drivers, and they were not able to train as apprentices in the iron trade, the milk industry or cement works (Ryan & Conlon, 1975).

The trades in which unions attained the most industrial strength and hence the most bargaining power were those from which women were excluded. The industries in which women tended to be concentrated – domestic service and the clothing industry – were generally not represented by unions nor were they covered by industrial awards. Of the 101 unions registered in NSW by 1905, only about a dozen included women (Ryan & Conlon, 1975). Women's wages at the turn of the century were substantially lower than men's wages. For instance, in 1907 the rates for a 53 hour week for shop assistants were fixed at £2 10s 0d for men 24 years and older, while for adult women the wage was £1 7s 6d.

The discrepancies between the wages earned by men and women were institutionalised in a series of wage cases in the first two decades of the twentieth century. In the

Harvester Judgment of 1907 a basic social minimum (male) wage was issued by Mr Justice Higgins. The actual value of this wage was based on an amount considered sufficient for an unskilled male worker to support a wife and two to three children. Curthoys (1986: 328) notes there is general consensus that 'the family wage was secured at least in part as the result of male trade union action'. It was not until 1912, with the *Mildura Fruit Pickers' Judgment*, that a female minimum wage for 'women's work' was determined. For work done by both men and women it was decided that they should be paid equal amounts if the work was to continue to attract men. By paying the 'mixed sex' occupations at the male rates, the status of the occupations were aligned with the occupations in which men dominated.

By 1919 it was generally accepted within industrial awards and by employers that the female basic wage should be 54 per cent of the male basic wage (Ryan & Conlon, 1975). This was calculated on the needs of a single woman — ignoring the family responsibilities she may have had. It was simply assumed that working women had no legal responsibility for their dependents. Throughout the subsequent national wage cases, the male basic wage was adjusted according to some combination of 'needs', changes in the cost of living and a capacity to pay by the employers. The female wage was then adjusted to reflect 54 per cent of the male wage. The notion of the 'family wage', as adopted by the Arbitration Courts, was to hinder the progress of women's pay rates for the next fifty years as it reinforced the secondary status of women as wage earners and their primary role as homemakers (Ryan & Conlon, 1975; Jones, 1984; Dickens, 1991).

It seems that the changing industrial scene of the late nineteenth century and early twentieth century had not significantly benefited working women. Rather, it had legalised what had been common practice; that is, adult women earning only half the pay of working men.

It was not only women's lack of representation by unions that led to women having little chance to negotiate better pay and conditions for themselves (Curthoys, 1991).

The composition of the industrial boards and conciliation committees also worked against them. Despite having gained the right to vote, women were not able to participate in the discussions concerning their wages and conditions. For instance, the Arbitration Act in 1912 included the following requirement:

Each Board shall, beside the Chairman, consist of two or four other members, as may be recommended by the Court, one half in number of whom shall be employers and the other half in number of whom shall be employees, each of whom has been or is actually a bona fide engaged in one of the industries or callings so specified; provided that where the employers or employees in the industries or callings consist largely of females, members may be engaged who are not in the industries or callings.

*(NSW Industrial Arbitration Act 1912, part 2, Sec 17(4))*

Another example of legislation which apparently limited women's participation in paid employment was *The Married Women (Lecturers and Teachers) Act in NSW* in 1932. According to Mackinolty (1979) the effect of the legislation was to remove the right of married women to permanent employment in teaching in NSW. 'It provided for the dismissal of married women teachers employed at that time and introduced the policy that women must henceforth resign from the service upon marriage' (Mackinolty, 1979: 140). In the passing of this legislation, it was argued that women's place was in the home and that married women who were employed were depriving other, recently trained, teachers of employment. Although there was not unanimous support for the Act, Mackinolty (1979) claims it faced little resistance in the depression years when jobs were generally scarce. The issue of married women depriving others of jobs was an even more emotive issue in the depressed economic climate of the early 1930s. The Act was not repealed until 1947.

Despite the low wages earned and the various pieces of proscriptive legislation relating to women's employment, women's participation in the paid work force rose steadily from 1900 (Curthoys, 1986). In the early 1900s, domestic service and manufacturing were the largest occupation categories for women (Spearrit, 1975). The increase in women's employment tended to be in those areas in which women already predominated rather than in men's trades (Ryan & Conlon, 1975).

The labour shortages experienced during WWII meant that much of the legislation designed to limit women's participation in the paid labour force had to be dismantled. In the years 1939 to 1941, more than 94 000 women entered the paid labour force in Australia (Hargreaves, 1982). During the war years, the Federal government made a concerted effort to encourage women 'to go to work' (Ryan & Conlon, 1975: 124). Over this period, women were able to work in areas from which they had previously been excluded — areas which were relatively well paid as they were considered 'men's jobs'.

The Women's Employment Board (WEB) was established in 1942 to monitor the pay and conditions for women entering traditional male areas of employment. How the Board was to award these rates was significantly different to previous wage fixing principles in Australia. The Board was to set women's pay rates with due consideration to women's efficiency and factors likely to affect productivity of their work *vis-a-vis* men (Ryan & Conlon, 1975). To ensure that men would return to these jobs following the war, the pay for women performing the work in these industries was increased to, on average, 90 per cent of what had been the male rates. If the wages and conditions had been altered to reflect the going rates in the traditional female occupations it was thought they would no longer be attractive to the returning servicemen as they would be too meagre to cover the expenses of a family (Ryan & Conlon, 1975).

As women in traditional female industries — particularly the clothing and rubber industries — were agitating about the discrepancy between their basic wages and those of women in the 'male' industries, the female basic wage was increased to 75 per cent of the male basic wage during the war years. As Ryan and Conlon (1975: 132) note:

By flocking into the better paid work and deserting the clothing and rubber trades, women were able to lift the pay rates — the market being the 'guiding factor'.

### 2.3 Australian women at work — the post-war period

The economic boom in the post-war period had significant implications for women's participation in paid employment (Hargreaves, 1982). In the period 1948 to 1968, productivity gains in the manufacturing sector meant the value of production increased more than six-fold (O'Donnell, 1984). As the government had developed a comprehensive immigration program to provide additional labour, the 1950s and 1960s saw extensive recruitment of migrant labour, from both English and non-English speaking countries. This additional labour led to a greater increase in women's employment than men's, with migrant women representing a quarter of the female labour force by 1971 (Hargreaves, 1982).

In Table 2.1 it can be seen that women's participation in the labour force increased substantially between the period 1947 and 1986 — from 22.4 per cent in 1947 to 39.6 per cent in 1986. A significant feature of this changing participation rate was the increase in the number of married women in the paid labour force. Nearly 48 per cent of married women were in the labour force in 1986, which was in marked contrast

**Table 2.1: Women in the Australian labour force, 1947–1986**

Year	Women proportion of the labour force (%)		Married women as a proportion of female labour force (%)	Women's labour force participation rate (%)	
	Married <sup>a</sup> women	All women		Married <sup>a</sup> women	All women
June 1947	3.4	22.4	15.3	6.5	24.9
June 1954	7.0	22.8	30.5	12.6	26.3
June 1961	9.6	25.1	38.3	17.3	28.9
June 1966	14.1	29.5	47.8	26.6	35.2
June 1971	18.0	31.7	56.8	32.8	37.1
June 1981	21.7	37.6	57.6	44.3	45.6
June 1983	21.1	37.5	57.4	44.0	44.4
June 1986	23.4	39.6	59.0	47.8	48.2

*a:* Married women includes those living in de facto relationships.

*Source:* Eccles (1982), Mumford (1989)

to 1947 when only 6.5 per cent of married women were in the paid work force. Hargreaves (1982) argues that this changing pattern of women's employment participation was the result of many factors; the changing perception of women's role in society, the trend towards smaller family sizes, the postponing of child-bearing to a later age, and the demand for labour by the economic system in a time of industrial expansion and economic growth.

While women were increasing their participation rates in the paid work force, men's participation rates were declining. The participation rate for men fell from 83 per cent in 1965 to 78 per cent in 1978. Hargreaves (1982) attributes this decline to more men continuing their education beyond the age of fifteen and an earlier retirement age; both factors leading to a shorter working life for men, thereby reducing their participation rates. However, as the relatively small reduction in men's participation rates was coming from such a high base, men continued to represent the majority of the paid work force.

## **2.4 Occupational segregation**

Women's participation in the paid labour force in the post-war period was of a different nature to their participation patterns during the war. Rather than the traditional male occupations they had entered through the war years, in the post-war years employed women tended to be absorbed by the growing service sector as restrictions on the types of work women could undertake were reimposed (Connell, 1980). For instance, restrictions were placed on women lifting weights greater than 20 pounds; women were not permitted to work in 'dangerous' areas such as metal working, forging, welding; and women were not permitted to use machines that made aerated waters or aluminium ware (Hunter, 1962; Connell, 1980). Although many of the restrictions could be labelled 'protective' as they related to occupational health and safety, Connell (1980) argues there were other restrictions which could clearly be labelled 'anti-competitive' as they excluded women from traditional male occupations. Because women were subjected to such restrictions — whether 'protective' or 'anti-competitive' — the

growing participation of women in the paid work force in the post-war period did not result in a substantial diminution of the occupational segregation of men and women which had characterised the Australian labour force prior to WWII.

When examining the occupational segmentation of the Australian labour market, the gender segregation characterising it is striking. A disproportionately female occupation is one in which women make up a higher proportion of workers in that occupation than they do in the total labour force (Mumford, 1989). This definition assumes that women should be represented across all occupations in accordance with the female share of the total labour force. For those occupations in which women have a participation rate which is greater than their share of the total labour force, the occupation is considered a 'female' occupation. A similar definition holds for a 'male' occupation.

Using the above definition of a 'female' occupation, Power (1975) reviewed the female and male labour markets in Australia from 1911 to 1971. In Table 2.2, Power's summary of the proportion of women in female occupations is presented, as is Mumford's update to 1985. The increase in women's participation rates is clearly evident in the second column of Table 2.2.

**Table 2.2: Women in 'female' occupations: Australia 1911-1985**

Year	Females as a Percentage of Total Labour Force	<i>Disproportionately Female Occupations<sup>a</sup></i>	
		Percentage of Female Labour Force Expected in These Occupations	Percentage of Female Labour Force Observed in These Occupations
1911	20	23	84
1921	20	26	83
1933	23	22	74
1947	22	33	78
1961	25	32	80
1966	30	34	80
1971	32	39	82
1975	35	28	80
1980	37	30	81
1985	38	31	82

a. An occupation is considered 'disproportionately female' when women form a higher proportion of the workers in the occupation than they do in the total labour force.

Source: Power (1975); Mumford (1989).

The third column in Table 2.2 presents the percentage of the female labour force that would be expected to be observed in these occupations if their sex classification was the same as the sex composition of the labour force as a whole. The fourth column presents the percentage of the female labour force actually involved in those occupations defined to be disproportionately female. The narrow range (74 to 84 per cent) of women in the disproportionately female occupations over the seven decades indicates that little change to the gender segregation of occupations had occurred. The figures clearly illustrate how concentrated the great majority of women were in a limited range of occupations and that very few men participated in these occupations.

Epstein (1971) adds a further dimension to the notion of a 'female' occupation. She argues that a 'female' occupation is not only one where there are disproportionately more women, but that there is also an associated normative expectation that this is how it should be. Similarly Power (1975: 228) notes that:

... female occupations are those in which work relationships require men to be in authority over women and where the nature of the work is often a derivative of housework, for instance, work associated with food, clothing and cleaning and work which involves caring for the young and sick.

The occupational breakdown of the Australian work force over the period 1966 to 1986 (the year the affirmative action legislation was introduced in Australia) is contained in Tables 2.3 and 2.4. (Two tables are required to illustrate the changes because in 1986 the ABS altered the classification system of occupations).

The first half of Tables 2.3 and 2.4 represent the distribution of employed women across occupations, while the second half indicate women's share of a particular occupation. As can be seen from both Tables, women increased their share of most occupations over the twenty year period. The only occupation in which women decreased their share was the trades, production–process work and labouring category

As noted above, Hargreaves (1982) maintains that the changing employment patterns for women over the 1960s and 1970s were the result of structural changes occurring in

**Table 2.3 : Occupational concentration of women 1966–1981**

	Proportion of employed women in each occupation (%)			Employed women as a proportion of workers in each occupation (%)		
	1966	1971	1981	1966	1971	1981
Professional, technical and related work	13.2	13.7	17.5	40.8	42.3	46.0
Administrative, executive and managerial	2.5	2.5	3.1	12.0	12.0	14.0
Clerical	29.9	32.0	29.9	59.8	63.8	70.0
Sales	12.5	12.3	10.8	45.5	48.3	53.5
Farming, fishing, hunting, timbergetting	5.0	3.8	6.4	10.7	15.5	20.4
Transport and communication	2.4	2.4	2.2	12.1	13.7	14.7
Trades, production-process work, labouring, n.e.c.	15.9	13.5	12.4	16.6	13.3	12.1
Service, sport and recreation	15.3	14.7	17.6	58.3	62.7	62.7
Others	3.3	5.0	—	62.4	37.8	—
TOTAL	100.0	100.0	100.0	29.5	31.7	36.2

Source: ABS Cat 6203.0

**Table 2.4 : Occupational concentration of women 1986**

	Proportion of employed women in each occupation (%)	Employed women as a proportion of workers in each occupation (%)
	1986	1986
Managers	6.2	22.5
Professionals	11.9	39.0
Para-professionals	6.4	43.1
Tradespersons	4.3	10.0
Clerks	22.6	74.1
Salespersons & personal service workers	22.0	63.0
Plant and machine operators & drivers	3.4	16.7
Labourers & related workers	13.4	33.5
TOTAL	100.0	39.6

Source: ABS Cat 6203.0

the economy. Although the manufacturing sector accounted for the greatest share of the increase in the value of gross national product, the white-collar industries saw the greatest expansion in jobs (O'Donnell, 1984). Despite the remarkable increases in women's participation rates, women were still heavily concentrated in the clerical and salespersons and personal service workers occupations (ABS, 1986). The occupations in which men still dominated were: managers; tradespersons, plant and machinery operators; and labourers and related workers. Occupational shifts appear to have

occurred more in 'mixed' sex occupations, such as professionals, technical and related workers, than in those occupations which had traditionally been male or female.

By 1986, over 18 per cent of women were employed in the 'mixed' sex occupations of professionals and paraprofessionals, representing 39.0 per cent and 43.1 per cent of total workers in those groups respectively. The increase in these two groups has been attributed to the increased levels of education for women. Eccles (1982) notes that in 1971, only 14 per cent of women in the work force had post-school qualifications, compared to 1980 when 32 per cent of women held post-school qualifications. That the qualifications most commonly held by women related to teaching and nursing is consistent with Epstein's description of a female occupation. Women working as professionals were heavily concentrated in the teaching and nursing fields, while in the more lucrative, 'masculine' fields, such as business, women were under-represented. For instance, although women represented 40 per cent of the total paid work force in 1986, they represented only 22.5 per cent of management, and estimates of their representation in senior management varied from 2 to 5 per cent depending on the industry (Still, 1988).

## **2.5 Industrial segregation**

As with the occupational distribution of women, women's increasing participation rates had some impact on their share of the total work force in all industries (except for recreation, a traditional female industry). Community service and recreation remained the industries in which women were concentrated. As the proportion of women in these industries was greater than women's share of the total work force, these industries can be defined as 'female' industries. Community service, in particular, is consistent with Power's definition of women's work; that is, work which is a derivative of housework or involves caring for the young or sick. In Table 2.5, the industrial concentration of women over the twenty year period 1966 to 1986 can be seen.

**Table 2.5: Industrial concentration of women, 1966–1986**

<b>Industry</b>	1966 %	1971 %	1981 %	1986 %
Agriculture, forestry fishing & hunting	15.5	18.1	26.2	27.9
Mining	na	na	9.3	7.9
Manufacturing	25.2	26.8	25.0	27.0
Electricity	na	na	10.7	10.6
Construction	3.4	5.3	10.4	13.5
Wholesale & retail trade	38.4	39.8	42.8	43.9
Transport	9.9	13.1	15.2	17.5
Communication	na	na	25.3	28.1
Finance, property & business services	41.5	43.5	45.2	48.4
Public administration	na	na	33.2	35.6
Community service	59.2	60.9	62.4	63.6
Recreation	60.2	60.2	55.6	56.0
Other industries	20.0	23.1	na	na

Source: Eccles (1982); ABS Cat No: 6203.0

In the more traditional 'male' industries of agriculture, construction and transport, women increased their representation. From 15.5 per cent of the total workers in agriculture in 1966, women increased their share to nearly 28 per cent in 1986. One explanation put forth for the increasing representation of women in the agricultural sector is that of 'label' changing. In other words, women have always played an active role in running farms; they simply did not label themselves as such in the past. For instance, Powell (1985: 13) attributes some of the changes in the employment status of women to a changing self-perception 'wherein women on rural properties changed their labour force status from home duties to employed'.

Women also increased their representation in the construction industry from 3.4 per cent in 1966 to 13.5 per cent in 1986, while in transport they increased their share from 9.9 per cent of total workers in 1966 to 17.5 per cent in 1986. Although these industries could still be defined as 'male' industries, they were less so than they had been 25 years earlier.

## 2.6 Equal pay

In 1950, following an inquiry into basic wages, the federal tribunal determined that female wages should be set at 75 per cent of the male minimum wage (Deery & Plowman, 1991). Despite some attempts by groups such as the Australian National Council of Women, the Union of Australian Women and the Australian Federation of Women Voters to raise public awareness of the inequities in the relative wages of men and women, the campaign for equal pay did not attract significant attention until 1969. One minor victory was the *New South Wales Industrial Arbitration (Female Rates) Amendment Act* which was enacted in 1959. Drawing on the 1951 International Labour Organisation (ILO) Convention on Equal Pay (No.100) which recommended equal remuneration for men and women workers for work of equal value, this Act required that where it could be demonstrated that work done was 'of a like nature and equal value' state awards had to be adjusted to ensure equal pay.

Ryan and Conlon (1975) contend that this was a blatantly sexist piece of legislation as a woman trying to establish a case for equal pay had to relate her work to that of a man in the same occupation. This was a particularly difficult task because of the occupational segregation of the Australian labour force. The only occupation it was possible to make a valid comparison with any ease was the mixed-sex occupation of teaching. In most occupations it was claimed that women were doing different work to men (that the work was not of a like nature and equal value) and so the ruling was not relevant.

It took a further ten years for the principle embodied in the NSW legislation to be incorporated into a federal ruling. It was not until 1969 that the Commonwealth Conciliation and Arbitration Commission accepted that women doing the same work as men should be paid the same wages; that is, 'equal pay for equal work'. The problem of the limited effect of the state legislation also dogged the federal tribunal ruling. As the thrust of the ruling was similarity of job content, the ultimate effect of the ruling could only ever be limited because of the occupational segregation characterising the Australian labour market. At that time, only 15 per cent of employed women were

doing the same work as men, consequently only 15 per cent of employed women were covered by the federal ruling (Hargreaves, 1982).

The limited effect of the ruling was effectively challenged in the 1972 National Wage and Equal Pay cases. As it was recognised that, in effect, women working in female occupations were excluded from the equal pay provisions, the federal tribunal adopted a new principle of 'equal pay for work of equal value' (Deery & Plowman, 1991: 497). This meant that women concentrated in the 'female' occupations could also seek wage parity. The 'equal pay for work of equal value' principle was to be phased in three stages and all employers were expected to have implemented it by 30 June 1975.

The implementation of this wider principle was not without its problems. How the 'value' of sex stereotyped jobs is determined is very much based on social attitudes and subjective judgments (Cockburn 1983, 1985; Burton, 1991). Hargreaves (1982) provides an example of this problem by comparing the value of 'male' occupations and 'female' occupations. The ability to lift heavy objects (a male worker's stereotype) is valued more highly than the manual dexterity needed to define detailed work (a female worker's stereotype). The submission by the National Pay Equity Coalition to the 1988 National Wage Case also contained reference to the different criteria used for valuing men's and women's work.

The most common examples emerging from the research are the higher value placed on financial responsibility than responsibility for people; managing or controlling people is more highly regarded than caring for them; in many non-management jobs physical effort is valued more highly than mental effort, which in any event is not always recognised as such in predominantly female jobs; and responsibility for machines is more highly valued than responsibility for people.

(National Pay Equity Coalition, 1988: 10)

It can be seen in Table 2.6 that although the period 1969–86 saw an improvement in the wages of women relative to men, parity was still not achieved. The occupational and industrial segregation of women in the Australian labour market has always been a confounding factor in the quest for equal pay.

**Table 2.6: Ratio of female to male earnings (percentages), 1914–1986**

Year	Award rates Females/males	Earnings Females/males	Earning ratio /Award ratio
1914	49.3	n.a.	n.a.
1939	53.6	n.a.	n.a.
1950	69.5	n.a.	n.a.
1964	72.0	59.2	82.2
1969	72.0	58.4	81.1
1970	73.2	58.1	80.7
1971	74.6	60.7	81.4
1972	77.4	64.3	83.1
1973	79.4	65.9	83.0
1977	93.3	81.0	86.6
1980	91.6	79.6	86.9
1983	91.6	82.3	89.8
1986	92.3	82.6	89.5

*Note:* Prior to 1986 earnings are for private sector employees only. From 1986 the figures are for both private and public sector employees.

*Source:* Mumford (1989).

Throughout the 1970s, the women's movement in Australia was gaining momentum. In the US, the publication of Betty Friedan's *The Feminine Mystique* in 1963 had opened many women's eyes to the part that post-World War II media and education played in defining women's roles in terms of motherhood and marriage and helped mobilise them as a political force (Alpern, 1993). In Australia, Germaine Greer's work in *The Female Eunuch* (Greer, 1970) had a similar effect on women. Women were becoming increasingly aware, and resentful, of the apparent inequities between women and men in society. The Women's Electoral Lobby (WEL) was formed in 1972 as women recognised the need to be collectively active if change was to occur. From its inception, the WEL became actively involved in the political process at both the state and federal levels (Sawer & Simms, 1984), demanding that governments address a range of issues. According to Ronalds (1990) one of the central concerns of feminists mobilised in Australia in the 1970s and 1980s related to employment issues — including access to jobs and promotions, equal pay, access to affordable child care and links between education and employment opportunities.

## **2.7 The international scene**

One of the most widespread strategies adopted by Western industrialised nations in recent decades to ameliorate gender-based labour market inequality has been legislation aimed at ensuring equal pay and equal employment opportunities.

(Whitehouse, 1992, 65)

The changing role of women in the paid work force in the post-war period was not confined to Australia. Many other western countries experienced such social change, and similar inequities in opportunity and remuneration between male and female workers were evident. From its establishment in 1919, the International Labour Organisation (ILO) has been concerned with ensuring all participants in the work force enjoy equality of opportunity and treatment (Kramar, 1991). In response to the inequities in opportunity and treatment apparent in most countries, the ILO developed a number of conventions – with some specifically concerned with improving the status of women in the work force. Arguably, the most influential ILO Conventions relating to the push for equal opportunities in the 1970s and early 1980s, were ILO Conventions No.100 (Equal Pay) and No.111 (Discrimination). ILO Equal Remuneration Convention No.100 was declared in 1953. Article 2 of this Convention requires that:

Each member shall by means appropriate to the methods in operation for determining rates of remuneration, promote and in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

ILO Discrimination (Employment and Occupation) Convention No.111 was passed in 1958. Article 2 of this Convention requires that:

Each member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination with respect thereof.

As well, the United Nations attempted to redress the problem of discrimination in its Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the UN General Assembly in 1979 and since ratified by many countries, including Australia in 1983 (Law Reform Commission, 1994).

In 1981, the ILO adopted ILO Convention 156 which extended the grounds on which discrimination is prohibited under ILO Convention No.111 to include family responsibilities (L'Orange, 1990). Australia ratified this convention in March 1990.

Internationally, a movement against discriminatory work practices was gaining momentum (Vogel-Polsky, 1985a; 1985b) and Australia was not untouched by it. Countries have adopted different approaches in attempting to translate the principles of anti-discrimination and equal employment opportunities into practice. Examining the responses of other signatory countries to the ILO Conventions and CEDAW provides a means of contextualising the Australian legislative response.

The distinction between anti-discrimination and equal opportunity legislation is made by Kramar (1991: 50).

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.

In effect, anti-discrimination legislation addresses problems of discrimination after-the-event by providing a means of recourse for discriminatory practices that have occurred, while equal opportunity legislation promotes action for the removal of the sources of discrimination as a preventative approach. It is a preventative approach.

The equal employment opportunity actions taken by countries vary, as do the names for them. Some countries refer to the steps taken by firms to ensure employment practices are not discriminatory against women as 'affirmative' action, whilst others prefer the term 'positive' action.

### **2.7.1 United States**

Equal employment opportunity, as a formal requirement in the US, was first introduced in 1941, when President Roosevelt issued an Executive Order prohibiting discriminatory employment practices on the part of federal contractors. This first Order was concerned with prohibiting discrimination in employment on the grounds of race,

colour, creed or national origin; sex was not covered. In 1961, President Kennedy extended the scope of the Orders that had followed Roosevelt's, to include the requirement that Federal contractors act in a pro-active fashion to eliminate discrimination (but sex was still not covered by the Order).

The Contractor will make an effort to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, colour or national origin.

(Executive Order No, 10925)

The first anti-discrimination legislation, covering all employers, was passed in the US in 1964 with its *Civil Rights Act*. Title VII of the Act was directly related to the elimination of discrimination. Under this Title, it was unlawful for all public and private employers to discriminate on the basis of race or sex<sup>2</sup>. At the same time as the *Civil Rights Act* was passed, the Equal Employment Opportunity Commission (EEOC) was established and given the responsibility for ensuring compliance with Title VII by all employers except the federal government.

In 1965, President Johnson issued Executive Order 11246, which strengthened the requirements for federal contractors to implement affirmative action policies for under-utilised groups (Office of the Status of Women, 1985). Not only did this Order cover the contractor's direct dealings involved in filling federal contracts, all other business dealings of the company had to comply with the Order too. In 1967, this Order was superseded by Executive Order 11375 which included the addition of sex to the specified categories. Lucrative government contracts were thus used as a means to proscribe discriminatory practices and to encourage affirmative action policies.

The EEOC was also involved in affirmative action through:

- (1) the conciliation process of a discrimination complaint which could include an affirmative action plan; and
- (2) issuing Affirmative Action Guidelines to encourage employers to develop their own affirmative action plans.

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<sup>2</sup> It is interesting to note that sex was only added to the Civil Rights Act at the last minute by opponents of the Act as they believed the Act would be defeated if sex was included. They were, however, disappointed as the Act was passed with the amendment including sex (Sawer, 1987).

The EEOC could not, however, compel employers to implement affirmative action plans (OSW, 1985).

The *Equal Employment Opportunity Act* passed in 1972 extended the coverage of Title VII to include all private employers with 15 or more employees, all educational institutions, federal, state and local, government employers, public and private employment agencies, unions with 15 or more members and labour management committees for apprenticeship training (Benokraitis & Feagin, 1978; Sawyer, 1987; Edelman *et al.*, 1991).

In the US, then, the law covering equal employment opportunity and affirmative action is made up of a number of acts and executive orders which were developed in the mid-1960s as a result of the Civil Rights Movement (Edelman *et al.*, 1991).

## **2.7.2 European Community**

The European Community (EC) was established by the ratification of the Treaty of Rome in 1958. At that time the EC consisted of six full members; Belgium, France, Holland, Italy, Luxembourg and West Germany. Equal pay principles were incorporated into the founding principles of the EC. Article 119 of the Treaty of Rome stated that:

Each member state shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work... 'Pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or kind, which the worker receives directly or indirectly, in response to his employment from his employer.

(OSW, 1985: 83)

In 1974, the EC Council's *Resolution on Social Action* extended this principle to include the goal of achieving equality for women in all areas of employment. In 1975, the EC Council clarified the 'equal work' principle of Article 119 in its *Equal Pay Directive*. To ensure this principle applied to segregated occupations, the Directive included the words 'work to which equal value is attributed'. The Directive also required 'the elimination of all discrimination on the ground of sex with respect to all aspects of

remuneration' (OSW, 1985: 83). During the period 1975–1985, the EC Council adopted three other directives on equality between the sexes. One of these, the 12 July 1982 Directive, included measures 'to promote equal opportunities for men and women through positive action programs' (Vogel-Polsky, 1985b: 385). On 13 December 1984, the Council also adopted a more specific recommendation on the promotion of positive action for women (Vogel-Polsky, 1985b).

According to the recommendation, a positive action program contains

a range of promotional measures aimed at achieving equality of opportunity for men and women, particularly by eliminating *de facto* inequalities that restrict women's opportunities in vocational training and conditions of employment, including promotion.

Vogel-Polsky (1985a: 251)

Treaty obligations such as these are, in practice, enforceable only by states, so individuals within a state do not have direct recourse to them. Only when the treaty is made part of national law by the necessary constitutional steps can individuals enjoy the rights included in the treaty. For the equality principles to be operational at a national level, each member state had to alter its own legislation. By 1985, all signatories had introduced complementary legislation through their own national legal systems. The legislation implemented at the national level varied between the nations (Vogel-Polsky, 1985a; 1985b), reflecting cultural differences between the member countries rather than any fundamental differences in their approaches to the elimination of discrimination.

In the EC, then, while Council directives addressed issues of equality between the sexes, it was up to the individual countries to translate these principles into national legislation.

### **2.7.3 United Kingdom**

While the United Kingdom (UK) did not join the EC until 1973, it had taken action of its own to achieve equal treatment for women in relation to remuneration for employment. The *Equal Pay Act* was passed in 1970 and was to come into full effect

by December 1975. This Act specified that women's rates of pay should be equal to men's if they were doing the same, or broadly similar, work. It was not until the mid-1980s that Britain finally responded to an EC directive to institute the principle of 'equal value' in the *Equal Pay (Amendment) Regulations 1984*. The *Sex Discrimination Act*, which was more extensive in its coverage than the *Equal Pay Act*, was passed in 1975. The *Sex Discrimination Act* made it unlawful to discriminate on the basis of sex or marital status, in the areas of employment, education, goods, services and facilities and the disposal and management of premises (OSW, 1985). As Cockburn (1991: 29) notes, this law impacted on recruitment practices as

employers were forbidden to advertise a job as for one sex or the other ('doorman', 'dinner lady'), to refuse an applicant a job on the grounds of sex or to discriminate in the arrangements made for deciding who should be offered a job, or in the terms of the job offer.

This Act also prohibited indirect discrimination. The definition of indirect discrimination contained in the British Sex Discrimination Act 1975 is:

A person discriminates against a woman in any circumstance relevant for the purposes of any provision of this Act if — ... (b) he [sic] applies to her a requirement or condition which he applies or would apply equally to a man but —

- (i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and
  - (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and
  - (ii) which is to her detriment because she cannot comply with it.
- (Hunter, 1992: 21–22)

Where no award or exception applies the indirect discrimination provisions in the Act have been used to ensure part-time workers have the same pro-rata terms and conditions as full-time workers and to make more jobs and occupations accessible to part-timers. This is well illustrated in the 1984 case of *Home Office v Holmes* where the requirement that employees in a particular grade had to work full-time was found to indirectly discriminate against women (Hunter, 1992).

The Directives issued by the European Council concerning positive action for women in 1982 and 1984 also applied to the UK.

#### **2.7.4 Scandinavia**

The three Scandinavian countries Norway, Sweden and Denmark took action in the 1970s and 1980s to legislate against discrimination on the basis of sex and for 'positive action' in employment. In 1978, Norway passed the *Act Relating to Equal Status Between the Sexes (Equality Act)* to promote equal status between the sexes. As well, in response to the United Nations Decade for Women (declared in 1975), the Norwegian Government developed a National Plan of Action for the period 1981–1985 specifically aimed at improving the employment status of women. Sweden's *Equal Opportunities Act* was enacted in 1980. Covering both public and private employers, this Act declared it unlawful for an employer to subject an employee, or prospective employee, to unfavourable treatment on the basis of sex. Selection, recruitment, promotion, dismissal, conditions of work and the management and distribution of work are all covered by this legislation. The *Equal Treatment Act*, which bans sex discrimination in all areas of employment, was passed in Denmark in 1978. Unlike most other countries the Danish legislation is enforced through the ordinary courts, so an employer found to have breached the Act can be penalised through both civil and criminal law.

#### **2.7.5 Canada and New Zealand**

Equal pay legislation was first enacted in Canada in 1951 (Office of the Status of Women, 1985). This legislation ruled it unlawful for a woman to earn lower rates of pay than a man doing the same work in the same establishment. This fairly limited requirement was superseded in 1986 by the Employment Equity (EE) legislation, which encompassed a number of measures to remove institutionalised discrimination practices in the Canadian work force. In the context of the legislation, EE refers to a comprehensive planning process by an employer to:

identify and remove discrimination in employment policies and practices; remedy effects of past discrimination through special measures...and ensure appropriate representation of target groups throughout the organisation.

(Jain & Hackett, 1989: 190).

Employment equity programs are not only required in the public service, they have also been legislated for federally regulated employers and crown corporations. As well, the federal government has a contract compliance policy which requires employers with more than 100 employees bidding on government contracts of Can\$200 000 or more to be committed to implementing EE (Jain & Hackett, 1989).

The New Zealand Government passed the *Equal Pay Act 1972* with the objectives of removing and preventing discrimination on the basis of the sex of employees. Five years later, the *Human Rights Commission Act 1977* was passed which made it unlawful for employers to discriminate on the basis of sex, marital status, religious or ethical beliefs. Such discrimination was unlawful if it limited access to places, vehicles and facilities; goods and services; land, housing and other accommodation and education establishments. This latter Act also allowed for 'positive action' programs to improve the status of women. The *Human Rights Commission Act 1977* and *Race Relations Act 1971* were replaced by the *Human Rights Act 1993* which prohibits discrimination on a broader range of grounds than either of the previous Acts had.

In October 1990, pay equity legislation was introduced in New Zealand, but was repealed two months later following a change in government (CCH, 1992).

Although developments in each of the countries discussed above varied somewhat, there are similarities in the approaches taken to trying to eliminate the structural barriers affecting opportunities for women in the paid work force. In most cases there has been, as Antal and Izraeli (1993: 72) argue, a logical evolution from legislative actions relating to equal pay for equal work and proscribing discriminatory employment practices to legislation promoting equal opportunity in the form of positive, or affirmative, action. Such a pattern can also be traced within the Australian context.

## **2.8 Sex Discrimination Act, 1984**

For Australia, 1973 was not only the year that the principle of 'equal pay for work of equal value' began to be phased into the federal awards, it was also the year ILO Convention No.111 on Discrimination (Employment and Occupation) was ratified by the then federal Labor government. By becoming a signatory of the Convention, the government was committing Australia to enacting a national policy for the promotion of equal opportunity and treatment in employment and occupation.

To do this, a national committee and six state committees were established. Each state committee consisted of representatives from the state and federal government and the peak employee and employer bodies, the ACTU and the Australian Council of Employers' Federation, respectively. In addition to those members, the national committee included a representative from each of the three groups considered to be most affected by discriminatory practices; that is, women, migrants and Aborigines. As was the experience of other western countries, the initial focus of Australia's efforts in translating ILO No.111 into practice was the removal of discriminatory practices in the paid work force.

The committees' charter included investigation of cases of discrimination in employment, promoting equality of opportunity and advising the government on its anti-discrimination policy. As the committees had no legislative basis and hence no binding enforcement mechanisms (Hunter, 1992), the scope of their powers was seriously limited. Other problems with the committee-system were identified by committee members as they attempted to implement the principles of anti-discrimination. Hargreaves' (1982: 91) summary of the committees' reservations reveal 'the limited effectiveness of the discrimination committees in dealing with the real problems of many women and migrants who are concentrated in jobs with poor working conditions and other problems'.

Although many critics of the committee-system urged the government to introduce legislation, there was considerable resistance to this at the federal level. Members of the Women's Electoral Lobby (WEL), in particular, were vocal in their call for legislation. Their argument was that legislation would convey society's disapproval of discriminatory behaviour and confirm that inequalities warrant not only the attention of, but also action by, government (Ronalds, 1990).

Some states responded to this call much earlier than the federal government. South Australia was the first state to enact such legislation when it passed the *Sex Discrimination Act* in 1975. This legislation required the appointment of a commissioner for equal opportunity to conciliate complaints. As well, it established a Sex Discrimination Board to adjudicate where conciliation efforts were unsuccessful. In 1977, both NSW and Victoria enacted anti-discrimination legislation. In Victoria, a Commissioner for Equal Opportunity was appointed and an Equal Opportunity Tribunal was established, with similar responsibilities and functions of the South Australian Commissioner and Sex Discrimination Board.

The *NSW Anti-Discrimination Act, 1977* established an Anti-Discrimination Board. This Board had a somewhat broader charter than the South Australian and Victorian bodies. It was responsible for periodically reviewing state legislation and advising the government on the discriminatory nature of legislation. It was also responsible for providing assistance to government in the development of policies to counter discrimination and to make people aware of the existence and implications of the Act through community education. Although the Board was given conciliatory responsibilities, those cases which could not be resolved through conciliation were to be dealt with by the Equal Opportunity Tribunal (which was established in 1981).

It was not until 1984 that the federal legislation proscribing discriminatory behaviour was finally enacted. In November 1981, Senator Susan Ryan, then Shadow Minister for Women's Affairs within the Australian Labor Party (ALP), put forth a Private Member's Bill with the following objectives:

1. To fulfil Australia's treaty obligations under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
2. To make discrimination on the basis of sex and marital status unlawful in the areas of employment, education, the provision of goods and services, accommodation, land and clubs.
3. To promote affirmative action for women in employment.

According to Sawyer (1987) the adoption of affirmative action as an ALP policy was the result of a successful campaign by women agitating for such action within the ALP, which culminated in the endorsement of affirmative action by a special National Conference of the ALP in 1981.

There was not, however, unanimous support within the ALP for affirmative action.

A minor problem with Ryan's Private Member's Bill was that when it was proposed, although Australia was a signatory of CEDAW, it had not yet been ratified. More importantly, the Bill's lack of success in being passed was the result of the very strong objections raised by both members of the federal government and the ACTU concerning the suggestion that employers be compelled to practise affirmative action. The notion of affirmative action was seen at that time as much more controversial than the principle of anti-discrimination (Poiner & Wills, 1991), and was a major reason for the Bill's lack of acceptance at that time. The position of the (then) Coalition government was that organisations should not be compelled to practise equal opportunity. Rather, they should be encouraged. The ACTU, too, had reservations about the requirement for affirmative action as can be seen in the ACTU Executive Minutes of August 1982:

Although ACTU policy recognises the need, in appropriate circumstances, for affirmative action programs, the committee has reservations about the aspects of the Bill dealing with affirmative action. Whilst supporting positive measures to promote equality of opportunity, the committee considers that such measures should (in relation to employment matters) be developed in consultation with unions. Other reservations of the committee in relation to these aspects of the Bill relate to their workability and effectiveness and the need to encourage, through voluntary means, genuine support for affirmative action aspects of the Bill to be further considered and revised in consultation with the ACTU.

(as quoted in Schuler *et al.*, 1992: 131)

In their book, *Responsive Regulation*, Ayres and Braithwaite (1992: 20) note there is a long tradition of dispute between those who argue that corporations will only comply with a regulatory law when faced with prohibitive sanctions and 'those who believe that gentle persuasion works in securing business compliance with the law'. This, they summarise, as the 'deterrence' versus 'compliance' debate. Clearly, in relation to the issue of affirmative action, policy makers in the early 1980s were erring towards the 'compliance' model. Rather than enforcing affirmative action, they felt 'persuasion' to be the preferred approach.

When the Labor government came to power in 1983, Senator Ryan introduced a Sex Discrimination Bill, this time as Minister assisting the Prime Minister on the Status of Women. A critical difference between the 1981 and the 1983 Bills was the omission of any reference to affirmative action in the latter. According to Poiner and Wills (1991: 49) 'it was seen as prudent to separate the two prongs of policy in order to secure enactment of the anti-discrimination provisions'.

The objectives of the Sex Discrimination Bill were:

1. To eliminate discrimination on the basis of sex, marital status or pregnancy in the areas of employment, education, accommodation, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs, and discrimination involving sexual harassment in the workplace and in educational institutions.
2. To promote recognition and acceptance within the community of the principle of the equality of women.

Although there were some procedural objections to this Bill, the more serious objections concerned the principles contained in the Bill. The most publicised resistance to the Bill was from conservative women's groups, such as Women Who Want to be Women (WWWW), who claimed the Bill would devalue the role of those women not participating in the paid work force and would lead to the breakdown of the 'traditional' family unit. There were many claims made which, often deliberately, misrepresented the aims and content of the Bill (Ronalds, 1987). In particular, claims about the employment consequences of women's participation in the work force, which

echoed the same arguments raised in the 1930s to support the legislation requiring married women teachers to resign (for example, that young men would be denied employment opportunities) were focused on by the critics, rather than looking at the broader ambit of the Bill. The Bill not only proscribed discriminatory practices in employment, it was also concerned with education, the provision of goods and services and accommodation. These other areas, however, were hardly touched on in the public debate about the Bill.

After many, generally procedural, amendments to the Bill, it was finally passed through the House of Representatives in March 1984 and was gazetted from August of that year. The *Sex Discrimination Act* was originally administered through the Human Rights Commission, a body set up by the Coalition government in 1981. The Human Rights Commission was replaced by the Human Rights and Equal Opportunity Commission (established through the *Human Rights and Equal Opportunity Commission Act 1986*) in late 1986. The functions of the Commission include inquiring into any act or practice which may constitute 'discrimination' in employment, occupation or that may be inconsistent with 'human rights' (as defined by the HREOC Act). As well, the Commission has responsibility for general educative and promotional activities. While the Commission can conciliate complaints about discriminatory practices and it can conduct a public adjudication if conciliation is unsuccessful 'determinations of the HREOC are not binding or conclusive' (Hunter, 1992).

As with most anti-discrimination legislation in Australia<sup>3</sup>, the *Sex Discrimination Act* proscribes both direct and indirect discrimination against women (Hunter, 1992). Direct discrimination occurs if, on the basis of an individual's sex, that individual is treated less favourably than someone of the other sex is, or would be, treated in comparable circumstances (Mathews, 1988). Indirect discrimination occurs when decisions which seem to be neutral in fact have the effect of preferring one sex over the

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<sup>3</sup> See Hunter (1992) for a review of the federal, state and territory anti-discrimination laws.

other. If there is no reasonable basis for the preferential treatment, then the preference is deemed to be discriminatory.

Under the *Sex Discrimination Act* there were four criteria to be met by a complainant to prove indirect discrimination (Thornton, 1993):

1. there must be a requirement or condition with which the complainant is expected to comply;
2. a substantially higher proportion of persons of the opposite sex must be shown to be able to comply with it (the proportionality test);
3. the requirement is not reasonable in the circumstances (the reasonableness test)<sup>4</sup>; and
4. the complainant is not able to comply with the requirement or condition.

## **2.9 Affirmative Action (Equal Employment Opportunity for Women) Act, 1986**

Having gone through the arduous process of passing the *Sex Discrimination Act* in 1984, the federal Labor government adopted a somewhat different approach in its handling of the subsequent Affirmative Action Bill. It recognised that social legislation of this nature can strike a sensitive chord within the community and needs to be ‘managed’ (Winocur, 1995). Prior to introducing the Bill into Parliament, the Government circulated a two-volume Green Paper entitled *Affirmative Action for Women* to raise the awareness of those in the private sector of the issues surrounding affirmative action and persuade them of its appeal. In particular, the authors of the Green Paper sought to clarify what affirmative action was, as from earlier public debate it appeared there was a generally poor understanding of affirmative action. The definition of affirmative action included in the discussion paper was:

a systematic means determined by the employer in consultation with senior management, employees and unions, of achieving equal employment opportunity (EEO) for women. Affirmative Action is compatible with appointment and promotion on the basis of the principle of merit, skills and qualifications. It does not mean women will be given preference over better-qualified men. It does

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<sup>4</sup> Amendments to the *Sex Discrimination Act* in 1995 led to a simpler test for indirect discrimination. The new test does not require the complainant to satisfy the proportionality or reasonableness test (Human Rights and Equal Opportunity Commission, 1995).

mean men may expect to face stiffer competition for jobs. This is not discrimination.

(Department of Prime Minister & Cabinet, 1984a: 3)

The authors endeavoured to inform the wider public why sex discrimination legislation was not sufficient to ensure equal employment opportunity for women. In the Green Paper it is stated that the sex discrimination legislation was designed to provide a means of redressing individual complaints of unlawful discrimination on the basis of sex or marital status. As such, it was designed for an 'after-the-event' problem. Discrimination must have already occurred and a complaint been registered before any action can be taken.

The legislation does not itself assist in breaking down the high degree of occupational segregation which exists in the Australian work force. Nor does the legislation of itself require the examination of employment practices and policies against women.

(Department of Prime Minister & Cabinet, 1984a: 14)

By clearly enunciating the principle of affirmative action in a widely-distributed discussion paper, it was hoped that the confusion and misunderstanding surrounding the debate on the sex discrimination legislation could be circumvented (Sawer & Groves, 1994). In particular, the government sought to reassure the private sector of the flexible (rather than rigid) definition of an 'affirmative action program' it was setting. This flexibility can be seen in the non-prescriptive definition of an 'affirmative action program' ultimately contained in Section 3(1) of the Act. That is,

'affirmative action program', in relation to a relevant employer, means a program designed to ensure that —

- (a) appropriate action is taken to eliminate discrimination<sup>5</sup> 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.

Such a general definition was adopted by the architects of the legislation as they determined affirmative action to be an 'umbrella term for a very wide range of

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<sup>5</sup> Under the Act the term 'discrimination' is defined to mean direct or indirect discrimination against women that is unlawful according to the basic definition provisions of the *Sex Discrimination Act* (Hunter, 1992: 84).

programs by organisations to achieve equal employment opportunities for women' (Department of Prime Minister & Cabinet, 1984a: 8). Rather than explicitly outlining the form affirmative action programs should take, the legislation suggests eight steps to assist employers in developing an affirmative action program. This approach to legislation affecting organisations is not unique to the affirmative action legislation. Edelman *et al.* (1991: 75) point out that laws regulating organisational behaviour are generally rather vague, 'setting forth broad and ambiguous principles rather than dictating specific behaviours'.

At the same time as the Green Paper was released, the government announced that a voluntary pilot program would be carried out for a year involving 28 private sector organisations and three higher education institutions. The companies cooperating in the pilot program varied in size (although all had at least 100 employees) and were from a range of industries. According to Poiner and Wills (1991), the aims of the pilot program were two-fold; to illustrate how 'painless' and effective affirmative action was, and to identify and assess the difficulties employers and employees may encounter in putting an affirmative action program into practice.

A Working Party on affirmative action was constituted to review the performance of the pilot program. The Working Party was made up of representatives from employer organisations, unions, government and opposition and women, through the National Women's Consultative Council (Sawer, 1987). At the completion of the pilot program, the Working Party recommended legislation be passed that required organisations with more than 100 employees and higher education institutions to implement affirmative action programs for women. These recommendations were accepted by the government in late 1985, and legislation was drafted. Poiner and Wills (1991: 50) observe that although there was heated debate in the Senate about the Bill, 'there was, curiously, not the general mobilisation and outcry against the legislation that had attended the Sex Discrimination Act two years earlier'. Sawer (1987) suggests the more strategic approach taken by the government in 'selling' the proposed legislation under the

auspices of the Working Party may have been a major factor contributing to the relative ease with which the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* was ultimately proclaimed.

There are two other Commonwealth legislative provisions that cover equal employment opportunity in federal public employment. The *Public Service Reform Act 1984* amended the *Public Sector Act 1922* to make affirmative action for women and designated groups mandatory in all Commonwealth Government departments as well as some statutory authorities<sup>6</sup> (Hunter, 1992). As well, the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987* covered the larger statutory authorities, which at the time included Telecom, Australia Post, Qantas and Australian Airlines.

## **2.10 The implementation of the affirmative action legislation**

The Affirmative Action Act was proclaimed on 1 October 1986 with the goal of promoting equal opportunity. The aim of the legislation is to remove structural barriers in the workplace that have resulted in women being concentrated in 'relatively poorly paid and low status positions, with limited career paths, reduced likelihood of promotion and limited benefits' (Braithwaite, 1993: 328).

Although it was enacted on 1 October, 1986, the legislation was not implemented in full immediately. Instead, it was phased in over a three year period. Higher education institutions were the first to be covered by the legislation from 1 October 1986. Given the range in size of the private sector companies covered by the legislation (in terms of numbers of employees) and the consequent range in administrative resources, private sector companies were divided into three Bands for reporting purposes. Band 1 covered private sector employers with 1000 or more employees. Reporting began for Band 1 companies on 1 February 1987. Band 2 covered employers with 500–999 employees and these companies were required to report from 1 February 1988. Band 3

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<sup>6</sup> The relevant provision of the Public Service Act is s 22B.

companies were those with 100–499 employees, and their first report was not due until 1 February 1989.

Following a review of the legislation in 1992, the coverage of the Act was extended to include community organisations, non–government schools, unions and group training companies that have more than 100 employees (Affirmative Action Agency, 1992b).

The final form of the affirmative action legislation reflects what Ayres and Braithwaite (1992: 19) describe as ‘tit-for-tat (TFT) enforcement — regulation that is contingently provokable and forgiving’. They cite Scholz (1984a; 1984b) in outlining the TFT enforcement strategy.

TFT means that the regulator refrains from a deterrent response as long as the firm is cooperating; but when the firm yields to the temptation to exploit the cooperative posture of the regulator and cheats on compliance, then the regulator shifts from a cooperative to a deterrent response.

(Ayres & Braithwaite, 1992: 21)

With respect to the deterrent response, or penalties imposed, Ayres and Braithwaite (1992: 36) argue that gradations of deterrence are more effective than a single deterrent, for in most cases a single sanction is so drastic ‘that it is politically impossible and morally unacceptable to use it in any but the most extraordinary offences’.

The TFT approach appears to be the basis of the regulatory requirements of the affirmative action legislation. While organisations covered by the Act have been entrusted to implement policies to promote equal opportunities for women, there are eight steps outlined in the Act to assist employers in implementing an affirmative action program. These steps are summarised in Table 2.7.

Employers covered by the legislation are required to report to the Director of the Affirmative Action Agency annually, outlining their efforts to implement an affirmative action program. Companies failing to submit a report to the Agency within three months of the end of the reporting year are sent a reminder letter. If no report is then submitted, sanctions are applied.

**Table 2.7: Eight steps of an affirmative action program**

<b>Step 1:</b>	Development and communication, to all employees, of the organisation's policy statement on affirmative action.
<b>Step 2:</b>	Appointment of a senior manager who will assume corporate responsibility for the development, implementation and co-ordination of the affirmative action program.
<b>Step 3:</b>	Consultation with trade unions on the development and implementation of an affirmative action program.
<b>Step 4:</b>	Consultation with employees, particularly women employees, on the program.
<b>Step 5:</b>	Establishment and analysis of an employment profile of the work force, on a gender and job classification system.
<b>Step 6:</b>	Review of personnel policies and practices.
<b>Step 7:</b>	Setting of objectives and forward estimates within the program.
<b>Step 8:</b>	Monitoring and evaluation of the affirmative action program.

Initially, the only sanction facing employers who did not comply with the legislation was that they would be named in a report to the Minister for Industrial Relations for tabling in Parliament (section 19(1) of the Act). In 1992, the federal government extended the sanctions to include ineligibility for federal government contracts or assistance for those companies breaching the legislation (Affirmative Action Agency, 1992b). The gradations of deterrence, then, are a warning letter, followed by naming in parliament and ineligibility for government contracts or assistance.

While the legislation has been labelled the 'toothless tiger' by some authors (Eveline, 1994; O'Donnell and Hall, 1988) because of the perceived weakness of the sanctions, particularly the 'naming in parliament', others would disagree. Fisse and Braithwaite (1983) in their book *The Impact of Publicity on Corporate Offenders* have shown that a good corporate reputation is generally valued for its own sake and that organisations would be loath to lose that reputation. According to Ayres and Braithwaite (1992: 22), 'TFT can operate perfectly well with adverse publicity supplying the punishment payoff'. The Affirmative Action Agency, in its review of the legislation in 1992, concurred with this when it found that their consultations generally did not support

imposing additional penalties. There did, however, appear to be considerable support for extending the naming sanction to inadequate reports (Affirmative Action Agency, 1992b).

In light of this support for the sanctioning of inadequate reports, the Affirmative Action Agency introduced a system of minimum performance standards in 1993–94 (CCH, 1995). Those organisations submitting reports in which it is clear they are doing little or nothing to improve the employment status of women are deemed to have failed to meet the reporting requirements of the Act and are sanctioned accordingly.

Another dimension to the Affirmative Action Agency's efforts to persuade companies to implement affirmative action programs is the provision of awards each year to companies implementing innovative policies aimed at removing arbitrary barriers to women's employment opportunities. The Business Review Weekly (BRW) Affirmative Action Awards, presented annually in a public forum and published in the Agency's publication *The Triple A List*, highlight companies' efforts to improve employment opportunities for women. The 'carrot' of an Affirmative Action Award is part of the Agency's strategy to persuade companies to make efforts in the affirmative action domain. The awards also provide information and examples for other organisations developing affirmative action programs.

## **2.11 Workers with family responsibilities**

Another important, related action concerning women's employment opportunities was the ratification by Australia in March 1990 of ILO Convention 156, Workers with Family Responsibilities. Ratification obliged the government to make it an aim of national policy to:

...enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

Work and Family Unit (1995: 1)

Although presented in terms of ‘persons with family responsibilities’ and so, in theory, equally applicable to men and women, this Convention has more immediate relevance to women workers (L’Orange, 1990). It has been women who have traditionally borne the greater burden of family responsibilities; it has been their employment status most disadvantaged by the conflict between work and family responsibilities (O’Donnell & Hall, 1988); and it is to women that most work and family policies are targeted (Cass, 1995a).

In fulfilling its obligations under ILO Convention 156, the Australian government has developed a multi-faceted strategy which includes:

- changing attitudes regarding family responsibilities in the community and the workplace;
- recognising workers with families have particular needs by implementing employment conditions which help workers accommodate work and family responsibilities; and
- ensuring workers with family responsibilities have equitable access to vocational guidance and training opportunities (Kramar, 1993a).

To oversee implementation of the strategy, the Work and Family Unit was established within the Department of Industrial Relations.

With respect to the development of employment conditions to assist workers with accommodating work and family, the industrial relations arena is valued as an important vehicle for changing conditions and employment practices. ‘Government action includes...supporting fair, flexible and tailor-made workplace agreements which can be used to introduce family friendly initiatives in individual workplaces’ (Department of Industrial Relations, undated; 8: cited in Kramar, 1994; 68).

Both peak employee (the ACTU) and employer groups (the Business Council of Australia and the Australian Confederation of Commerce and Industry) formally

support such action (Kramar, 1994). In 1991, the ACTU adopted a 'Workers With Family Responsibilities Strategy', a key thrust of which was the inclusion of work and family issues on union agendas for enterprise bargaining. The strategy emphasised the need for action concerning family leave, improving the rights of part-time employees, developing strategies for encouraging a more equal division of domestic responsibilities between women and men, and improving the provision and affordability of child care (Dunoon, 1995).

On the employers' side, the Council of Equal Opportunity in Employment, a body established by the Business Council of Australia and the Australian Confederation of Commerce and Industry, provides advice to its members on the implementation of work and family policies and practices (for example, measures such as permanent part-time work, job-sharing, flexible hours, home-based work, family leave, and the provision of child care). As well, the Business Council of Australia co-sponsors (with the Work and Family Unit) the Corporate Work and Family Awards which recognise outstanding corporate achievements in family responsive policies and practices (Dunoon, 1995).

To guarantee national standards of equitable entitlement, provide a base for enterprise bargaining and protection for the most vulnerable employees, the Australian Industrial Relations Commission (AIRC) has used test cases and the federal government has introduced legislation for employment-based entitlements pertaining to the relationship between work and family responsibilities (Cass, 1995b). Two major test cases are the Maternity Leave Test Case for unpaid maternity leave in federal awards in 1979 and the Parental Leave Test Case handed down by the AIRC in 1990. The Parental Leave Test Case extended the maternity and adoption leave standards (for employees with 12 months continuous service with the same employer) in federal awards and in some state legislation to paternity leave. Fathers were given the right to share unpaid leave with the mother of the child in the first year following birth or adoption. The 1990 Test case also covered permanent part-time work for parents up to the child's second birthday and during pregnancy, subject to employer agreement (Cass, 1995b; Breakspear, 1996).

The *Industrial Relations Reform Act* was enacted in 1993 and included a number of changes particularly concerned with work and family issues. Specifically, it imposed an obligation on the AIRC to take account of the principles in ILO Convention 156. 'The Act provides for minimum entitlements in relation to parental leave, termination of employment including unfair dismissal, minimum wages and equal remuneration for work of equal value' (Dunoon, 1995: 9).

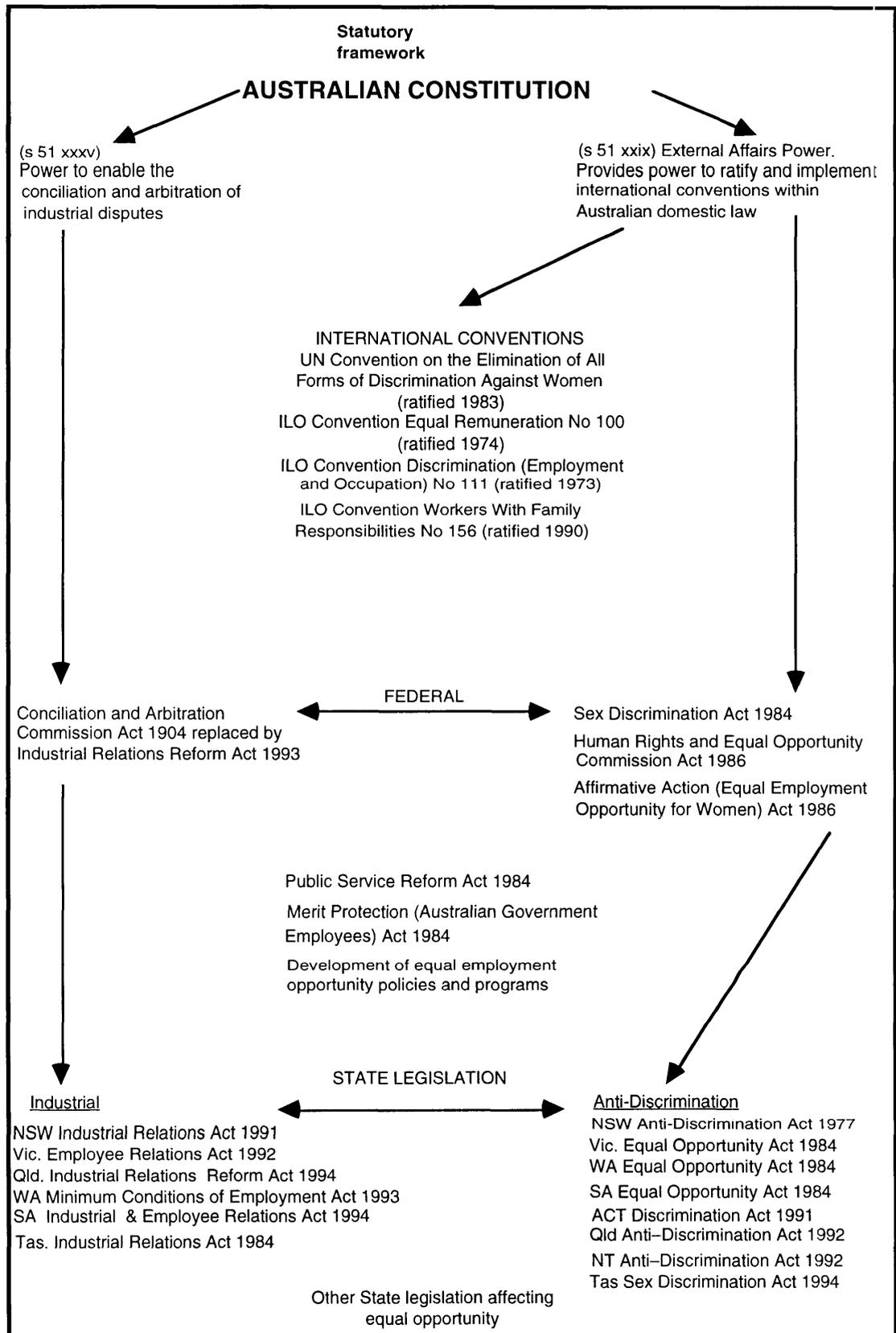
The relationships between ILO Conventions 100, 111 and 156 and the interventions in the labour market designed to promote equal opportunity in Australia (the anti-discrimination laws, affirmative action legislation and industrial relations laws covering work and family initiatives) are presented in Figure 2.1.

Clearly, efforts to improve employment opportunities for women in Australia have been influenced by the ratification of ILO Conventions 100, 111 and 156 and the ensuing actions taken by Australian governments including policy initiatives, tribunal decisions and legislative measures. These actions are not independent of each other. Rather, they seek to reinforce each other to create a labour market free of discrimination and a workplace climate promoting equality of opportunity (Cass, 1995b; Breakspear, 1996).

## **2.12 Summary**

Although women's participation in the paid work force has increased substantially since the turn of the century, by the early 1980s women still tended to be clustered in low income and low status positions. This problem was not unique to Australia. Ironically, it was legislative action earlier in the century which played some role in limiting women's opportunities to participate on an equal basis with men in paid employment, while in more recent years there have been legislative moves in many countries to redress the inequalities in employment opportunities between women and men. Some commentators have labelled the 1980s the decade of equal opportunity activism and Australia was part of this process (Eisenstein, 1991; Eveline, 1994).

Figure 2.1: Australian Equal Opportunity Legislation



Source: Burton, 1991; Hunt, 1993; Napoli, 1994.

In Australia, the *Sex Discrimination Act, 1984* was introduced to eliminate discrimination against persons on the grounds of sex, marital status, or pregnancy (and later amended to include workers with family responsibilities in relation to dismissal). This legislation, however, was seen as having only limited effectiveness in breaking down structural barriers limiting women's full and equal participation in the paid workplace. It was seen as reactive, rather than proactive, for it relies on a complaint to be made to the Human Rights and Equal Opportunity Commission (HREOC) before any action can be taken. The affirmative action legislation was implemented as a proactive means of removing barriers to women's employment opportunities and to improve the socio-economic status of women. Using a tit-for-tat (TFT) approach to enforcement, the legislation requires all private sector employers, community organisations, non-government schools, unions and group training companies with more than 100 employees and all higher education institutions to implement an affirmative action program which will improve the employment opportunities for women. The ratification of ILO Convention 156 by Australia in 1990 represents a further effort to improve employment opportunities for women as recognition of work and family issues has informed award restructuring and enterprise agreements (Cass, 1995b).

After nearly ten years of legislative action to improve employment opportunities for women, they still tend to be clustered in low income, low status positions (Half Way to Equal, 1992). This is not unique to Australia. In the following chapter, the nature of the debate concerning 'affirmative action' as a means for improving the employment opportunities of women is reviewed. Exploring the theoretical issues surrounding equal opportunity and affirmative action, particularly the different conceptualisations of equality, is an important step to understanding how affirmative action may be being translated into practice in Australia.

## Chapter 3

# The Debates Surrounding Equal Opportunity and Affirmative Action

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*The great leap forward sometimes translates to a form of shuffle ...*

(Cass, 1995b: 65)

### 3.1 Introduction

As discussed in Chapters 1 and 2, affirmative action legislation as a regulatory response to the perceived problem of inequality of opportunity by the federal government is a contentious issue. The term 'affirmative action' elicits a range of responses from people. There is neither universal support for, nor universal condemnation of, affirmative action (Bacchi, 1992; Thornton, 1994). Why such a range of responses is prompted by the term may, in part, be understood in light of the ongoing debate about the conceptualisation of equality of opportunity. 'Equality' is a contested concept (Pateman, 1981; Lacey, 1987; Collinson *et al.*, 1990). We don't all mean the same thing when we refer to equal opportunity. If there are differences in how equality of opportunity is defined, there are likely to be differences in how inequality is addressed; that is, in how affirmative action is implemented. Understanding the various meanings associated with equal opportunity can shed some light on the discourse that has grown up around affirmative action in the Australian context and must be considered in any process seeking to move beyond the rhetoric of affirmative action to understanding the practice of affirmative action.

In this chapter, various conceptualisations of equal opportunity are explored as a precursor to reviewing the debate surrounding affirmative action as it has developed in Australia.

### **3.2 Equal opportunity**

Forbes (1991:17) maintains that equality principles ‘as an identifiable category in thought and as a basis for political action, have remained an essential element in continuing attempts to organise, institute and achieve change in society’. The review in Chapter 2 of the legislative action taken in a number of western countries in the 1980s to address equality issues would seem to support this claim. In Australia, the *Sex Discrimination Act 1984* and the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* are examples of attempts to achieve such change in Australian society. As noted previously, the intent of the affirmative action legislation was to dismantle the discriminatory barriers which limit the opportunities for women in the workplace. Equal employment opportunity was the stated goal and affirmative action was the name given to interventionary practices designed to achieve the goal (Davis, 1991).

More recent evidence indicates there is considerable support from women and men for affirmative action for women as a means of achieving equal opportunity in Australia (Macquarie University, 1992: 2). Disagreement does arise, nevertheless, concerning the form affirmative action policies should take in practice, as equality of opportunity has no precise denotation.

Cockburn (1989: 215) notes that the tendency to dichotomise when describing equal opportunities is common (see for example, Jewson & Mason, 1986, 1987; Moens, 1986; Lacey 1987; Webb & Liff, 1988; Aitkenhead & Liff, 1991; Burton, 1991; Dickens, 1991; Edelman *et al.*, 1991; Forbes, 1991; Thornton, 1991, 1994; Cunningham, 1992; Braithwaite, 1993; Kramar, 1995a). While descriptions of dichotomous conceptions of equality of opportunity differ among authors, reflecting the socio-political context in which they are operating (Conaghan, 1993), there are similarities among the dichotomous schema of equality of opportunities. Varying conceptions of equal opportunity are reviewed in the following sections.

### **3.2.1 Direct discrimination**

One component of the various schema describing equality tends to be associated with the common understanding of discrimination. That is, discrimination occurs when people are disadvantaged because of particular characteristics (for example, sex, race, ethnicity). This form of discrimination is known as ‘direct discrimination’ in the Australian literature<sup>1</sup>. Jewson and Mason (1986: 313) maintain that direct discrimination underpins one approach to equality:

equality exists when all individuals are enabled freely and equally to compete for social rewards...Policy makers are required to ensure that the rules of the competition are not discriminatory and that they are fairly enforced on all.

An underlying assumption of this conceptualisation is ‘that everyone in the same situation should be treated identically’ (Hunter, 1992: 3). Cockburn (1989) claims that the aim of this approach is the removal of the collective barriers to the expression of individual talent. Labels for this conception of equality of opportunity have variously been ‘formal’ (Lacey, 1987; Thornton, 1991; 1994; Hunter, 1992), ‘liberal’ (Jewson & Mason, 1986; 1987; Webb & Liff, 1988; Aitkenhead & Liff, 1991; Dickens, 1991; Kramar, 1995a), ‘procedural’ (Edelman *et al.*, 1991; Braithwaite, 1993), ‘soft’ (Moens, 1986; Burton, 1991) and ‘minimalist’ (Forbes, 1991; Cunningham, 1992).

That identical treatment of people is problematic emerged from research carried out in the US in the 1960s concerning the labour market status of women and Black Americans (Hunter, 1992). The research pointed to a continuing relative economic disadvantage of these groups which could not be explained by reference to direct discrimination alone (Hunter, 1992). There were other exclusionary factors operating in the labour market, on which prohibition of direct discrimination had no effect. The dynamics of the labour market, particularly job hierarchies, were identified as encompassing a range of processes that generated advantage for some and disadvantage for others. The notion of ‘structural

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<sup>1</sup> In the US, this form of discrimination is labelled ‘disparate treatment’ (Burton, 1991; Hunter, 1992).

discrimination' evolved to capture the discrimination arising from the operating norms of most organisations; operating norms which favoured some while disadvantaging others.

Hunter (1992) argues that it is now well recognised that structural discrimination is the result of the design of organisational norms, rules and procedures used to determine the allocation of rewards being based on the attributes and life cycle patterns of the historically dominant group in public life. In the Australian context, this group has generally comprised able-bodied, heterosexual, Anglo-Celt men (Thornton, 1994). If people are measured against the dominant norms, members of the dominant group will be advantaged, while those not in the dominant group will be disadvantaged. An example of structural discrimination can be found in the valuing of continuous (over discontinuous) work histories. As women traditionally bear the primary responsibility for child rearing and domestic responsibilities, the patterns of their working lives have been significantly different to the male-norm. Women's discontinuous work patterns have been devalued relative to the (valued) continuity characterising most men's working lives (Burton, 1991).

The strict equal treatment, or formal, approach simply takes as given the dominant norms, as long as they do not include explicit distinctions between different groups. There is no questioning of the values implicit in these norms. For outsiders to compete within such a framework, it is necessary to behave as though they were a member of the dominant group. In that sense, this formal approach has been criticised as assimilationist (Thornton, 1986). The structures are exclusionary of difference.

Hunter (1992) illustrates this approach by reference to efforts by some organisations to secure more women in managerial positions by encouraging them to aspire to higher levels and be more committed to their careers, to put in longer hours and take on more responsibility; behaviour that has long been associated with male career progression. Hunter (1992) is critical of this approach because of the implicit assumption that the existing practices are the way things 'should' be done. There is no questioning of the existing structures and norms.

### **3.2.2 Indirect discrimination**

According to Hunter (1992), the limitations of this formal approach suggested the need for a different model of equality. One such approach is what Hunter (1992) refers to as substantive equality, which is designed to deal with the phenomenon of structural discrimination. As Justice Mary Gaudron of the High Court of Australia argued in the 1990 Mitchell Oration, this approach recognises that treating people as if they were the same as a norm from which they differ in significant ways is just as discriminatory as penalising them directly for their difference (Gaudron, 1990). In Australia, equal application of apparently ‘facially neutral’ employment criteria with which groups are not equally able to comply, has been labelled indirect discrimination<sup>2</sup>. For instance, a requirement that applicants for a job be at least 175cm tall indirectly discriminates against women and some racial groups such as Indo–Chinese, who tend to be shorter than males of European origin. Indirect discrimination was included in the anti–discrimination legislation in Australia (including the *Sex Discrimination Act 1984*) in the belief that it would address the more covert and insidious forms of discrimination not covered by direct discrimination (Thornton, 1994).

Other authors have elected to use different labels to describe their counterparts to formal equality. The particular meanings associated with their labels vary, reflecting the fluidity of the concept of equal opportunity (Thornton, 1995). For instance, from their research into equality of opportunities policies in practice, Jewson and Mason (1986; 1987) argued there were two conceptions — liberal and radical<sup>3</sup>. Their definition of the liberal approach bears a strong similarity to the formal conception outlined by Hunter (1992), in that it emphasises that non–discriminatory criteria of selection and decision–making should be institutionalised in the workplace. As well, their radical approach has some

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<sup>2</sup> In the US, this is known as the ‘disparate impact’ theory of discrimination (Hunter, 1992)

<sup>3</sup> Authors also using these labels include Webb and Liff, 1988; Aitkenhead and Liff, 1991; Dickens 1991; Kramar, 1995a. Other authors have preferred ‘procedural’ and ‘substantive’ (Edelman *et al*, 1991; Braithwaite, 1993), ‘soft’ and ‘hard’ (Moens, 1986; Burton, 1991), ‘minimalist’ and ‘maximalist’ (Forbes, 1991; Cunningham, 1992).

elements in common with Hunter's substantive equality. According to Jewson and Mason (1986; 315) the radical approach

seeks to intervene directly in workplace practices in order to achieve a fair distribution of rewards among employees, as measured by some criterion of moral value and worth. Thus the radical view is concerned primarily with the outcome of the contest rather than the rules of the game.

Proponents of the radical approach argue the social and historical context of the individual is of critical importance in understanding inequality as different groups exercise varying degrees of economic and political power. Jewson and Mason (1986, 1987) claim that those subscribing to the radical approach to equality of opportunity would support positive discrimination in favour of those previously excluded or under-represented (Webb and Liff, 1988).

An overlap between the substantive and radical approaches can be seen in this attention to outcomes. Hunter (1992) argues that to remove indirect discrimination and achieve substantive equality in practice, remedial action is required where the current norms result in disparate outcomes for various groups. This remedial action may, for instance, entail developing new criteria for selection which do not have an adverse impact on the particular group in question. As well, compensatory measures may be needed to offset the disadvantage of present criteria and the cumulative effects of past discrimination.

That compensatory measures may generate considerable resistance from those in the existing advantaged groups is acknowledged in the discussions of both the radical and substantive conceptions of equality of opportunity (Jewson & Mason, 1986, 1987; Hunter, 1992). Such resistance occurs because of the difficulties people have with accepting that existing practices may be unfair. According to Hunter (1992) there is a particular attachment to, and belief in, the fairness of those practices by the groups who have gained from them and who thus have a vested interest in their perpetuation. As well, efforts to accommodate specific differences may be perceived as special pleading, particularly by those who have been trained to think in terms of the formal (or strict equal treatment) model in which personal characteristics like sex or race are deemed irrelevant

in decision-making. But, as Hunter (1992) points out, such characteristics have always underpinned decision-making as the norms have been designed around the characteristics of one group and not others. What the substantive model of equality does is to explicate minority-group membership in decision-making.

A criticism made by Cockburn (1989: 217) of the radical approach as defined by Jewson and Mason (1986; 1987) is that, although it may aim to assist disadvantaged groups (whether they be women or any minority) in career progression (or getting up the ladder) it basically leaves 'the structure of that ladder and the disadvantages it entails just as before'. Webb and Liff (1988: 549) also identify limitations with this means of categorising equality of opportunity. They suggest that the focus on positive discrimination inherent in the radical approach 'gives too much legitimacy to the basis on which jobs are offered'. They claim that women's under-representation in high-status occupations is not because they are less able to carry out tasks. Women are excluded because of the way necessary qualifications are defined.

The competition is structured against women because the job is perceived as requiring skills, experiences and working patterns far more likely to be found amongst men, or indeed seen as inherently male.

(Webb & Liff, 1988: 549)

The lack of consensus for a conceptualisation of equality of opportunity has ramifications for how inequality is addressed and the outcomes expected from an equal opportunities policy. Those subscribing to a formal conceptualisation of equality will have markedly different expectations about the nature and desired outcomes of an equal opportunities policy to those subscribing to a substantive, or radical, conceptualisation of equality (Jewson & Mason, 1986; 1987).

### **3.2.3 Systemic discrimination**

Another form of discrimination identified in the equal opportunities literature is that of systemic discrimination (Davies, 1982; Hunter, 1992). As noted above, both direct and indirect discrimination are defined in the anti-discrimination legislation in Australia. As this legislation is complaint-based, it generally requires identifiable victims to cite

particular acts of discrimination and an identifiable wrongdoer who can be held responsible for the discrimination (Thornton, 1994). Systemic discrimination is the combination of directly and/or indirectly discriminatory practices which decrease employment and promotion opportunities for a given group (Davies, 1982).

Hunter (1992: 14) cites a Canadian sex discrimination case<sup>4</sup> to illustrate the nature of systemic discrimination.

(S)ystemic discrimination in an employment context is discrimination that results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is the result of 'natural' forces, for example, that women 'just can't do the job'. To combat systemic discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged.

The Australian affirmative action legislation was developed as a means of addressing systemic discrimination. Rather than waiting for discrimination (direct or indirect) to occur before action could be taken, it was envisaged that affirmative action would confront the systemic nature of sex discrimination (Thornton, 1994); prevention rather than cure.

Consistent with the recognition that systemic discrimination represents a combination of direct and indirect discrimination, Cockburn (1989) suggests the tendency to represent the approaches to equal opportunities as dichotomous, as in the descriptions of the formal/substantive and liberal/radical approaches outlined above, underplays the complexity of the equal opportunities movement. This proclivity to dichotomise is not unique to conceptualisations of equality of opportunity. Gould (1991: 21) suggests that the tendency to 'classify by the painfully inadequate technique of dichotomy' is characteristic of human modes of thinking, but this property of mind limits our appreciation of the varied nature of phenomena. In practice, all implemented affirmative action policies can not be categorised as simply formal/substantive or liberal/radical as 'the demarcation lines between contrasting positions are subtly etched' (Forbes,

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<sup>4</sup> *Action Travail des Femmes v Canadian National Railway Co* (1987)

1991:17). Organisations are made up of diverse groups of people with different perspectives lobbying for various types of policies. Many affirmative action programs implemented in organisations contain elements of both conceptions of equality of opportunity (Jewson & Mason, 1986, 1987; Cockburn, 1989).

Cockburn (1989: 218) argues that what has emerged from the research into equal opportunities policies and practices is not as simple as the dichotomies suggest. Rather, equal opportunities is better presented as an 'agenda of shorter or greater length'. In effect, a continuum rather than a dichotomy. Her version of the equality 'agenda' is described below.

At its shortest it involves new measures to minimise bias in procedures such as recruitment and promotion. It is formal and managerial, but nonetheless desirable. 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: the 'fair distribution of rewards' of the radical approach to EO. But it also looks for change in the nature of power, in the control ordinary people of diverse kinds have over institutions, a melting away of the white male monoculture. It is not just a numbers game, but about quality.  
(Cockburn, 1989: 218)

This depiction of equal opportunities as a continuum does represent a richer classification system than the 'painfully inadequate technique of dichotomy' (Gould, 1991: 21), but it may be that even a continuum cannot capture the real complexity of the varied conceptualisations of 'equality' that people hold. It may be that 'equality' would be best depicted in a multidimensional manner, but the difficulties we have in expressing multidimensionality through language (Gould, 1991) limits our ability to depict it as such. Cockburn's continuum of equal opportunities as expressed through 'the length of agendas' may, at least, better capture some of the multiplicity and difference in the conceptualisations of equal opportunities than a simple dichotomy can.

### **3.3 The framework for affirmative action in Australia**

In light of the varying conceptions of equality of opportunity and discrimination, it is useful to re-examine the definition of an affirmative action program as specified in the *Affirmative Action (Equal Employment Opportunity for Women) Act, 1986* when reviewing the Australian experience of affirmative action policies. Section 3(1) of the Act states that:

‘affirmative action program’, in relation to a relevant employer, means 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

Rather than detailing the specific form affirmative action programs should take, the legislation has left that for employers to determine. While providing some guidance to organisations through the detailing of the eight steps of an affirmative action program (see Figure 2.1 of this thesis), companies still have the freedom to implement the legislation as they wish according to their needs (Braithwaite, 1992).

As long as the programs are consistent with the aims of eliminating discrimination (direct and indirect) against, and promoting equal opportunity for, women in employment, employers are complying with the legislation. The legislation would appear, therefore, to allow for a range of affirmative action policies to be implemented. The equal opportunity ‘agenda’ could vary in length depending on the company. Some companies may opt for policies consistent with the formal conceptualisation of equality, that is, policies designed to remove discrimination from employment procedures, while other companies may opt for policies consistent with the substantive conceptualisation of equality. For instance, they may develop new criteria for promotion which do not have an adverse impact on women.

Section 3(4) of the Act limits the extent to which the positive discrimination outlined in Jewson and Mason’s ‘radical’ approach could be enacted. This section states that:

Nothing in this Act 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.

Merit, according to Burton (1988), denotes the relationship between an individual's qualities and those required for effective performance in a particular position. A so-called 'radical' action, such as setting aside relevant qualifications for a job, would not be sanctioned by the legislation. On the other hand, consistent with the spirit of the legislation would be the reassessment of the significance of qualifications for a position as the legislation encourages organisations to review structures and processes (Braithwaite, 1993). Such a review of structures and processes must not only challenge explicitly sexist criteria, but also apparently facially neutral criteria if indirect and systemic discrimination are to be removed. Companies may have real problems in achieving this if members of the organisation do not understand the nature of indirect discrimination.

To date, the question of the length of the agendas of equality (Cockburn, 1989) within organisations covered by the affirmative action legislation has received little attention in the Australian context. Little empirical research has focused on how organisations have been interpreting equal opportunity in their affirmative action programs. It is important, though, that public policy be informed by empirical data (Kravitz & Platania, 1993).

### **3.4 The Australian debate**

There is now a significant body of literature in Australia concerning affirmative action. A number of authors have contributed to the theoretical debate concerning affirmative action and equal employment opportunities in the Australian context (Moens, 1985; Sawer, 1987; O'Donnell & Hall, 1988; Thornton, 1990; Burton, 1991; Poiner & Wills, 1991; Kramar, 1991; Crowley *et al.*, 1992; and Braithwaite, 1993). The different perspectives taken by various authors provide an insight into the complexity of affirmative action legislation as a public policy response to equal employment opportunities. In the following sections, these authors' arguments are examined.

### **3.4.1 Numerical targets not quotas**

As mentioned in Chapters 1 and 2, debate concerning the relative merits of affirmative action was vigorous in the early 1980s when the prospect of affirmative action legislation was first raised in Parliament. Moens (1985) argued that the discourse surrounding affirmative action in Australia in the early 1980s was not concerned with whether there should or should not be affirmative action legislation. The principle of equal employment opportunity was, he argued, fairly well accepted. Rather, the debate revolved around the form affirmative action should take. He made the distinction between those policies concerned with equality of opportunity (what he labelled 'soft' affirmative action policies) and those concerned with equality of results (what he termed 'hard' affirmative action policies). Moens' 'soft' policies are those concerned with removing the arbitrary barriers to employment in response to discriminatory situations, and so could be seen as being consistent with the formal approach to equality. His version of 'hard' policies, on the other hand, tended to be limited to those involving quotas in hiring to redress the discrimination women have experienced in the past. By Cockburn's 'agenda' schema, 'soft' policies would represent a shorter agenda, whereas 'hard' policies would reflect a longer agenda. Neither 'soft' nor 'hard' affirmative action policies apparently were acceptable to Moens. 'Soft' policies were criticised because he believed they represented an insidious form of affirmative action which would undermine the principle of merit which, he claimed, characterised Australian employment practices. As Thornton (1990) points out, though, Moens provided no evidence to support his claim that merit already underpinned employment decisions.

Moens' arguments against 'hard' policies were confined to a discussion of the unacceptability of quotas because they may disadvantage those who would have, under normal circumstances, been appointed to a position. In reviewing the Green Paper released by the government prior to the legislation (Department of Prime Minister & Cabinet, 1984a; 1984b), Moens argued that the requirement for companies to set numerical goals for employment would necessarily lead to quotas. From his reading of

the proposed requirements of the legislation, Moens interpreted the setting of goals by an organisation as meaning that 'ultimately, a numerical target must be reached' (Moens, 1985: 69). Moens then presented his case against the implementation of such 'hard' policies. He argued against the 'targets' on two counts; first, they would disadvantage the competitive position of firms and second, that it is basically unfair that males now be disadvantaged because of past discrimination.

In fact, Moens' scenario of 'hard' policies being an inevitable outcome of the legislation has not eventuated. The architects of the affirmative action legislation deliberately avoided any provision for 'hard' affirmative action policies. The statistical profile and analysis required in the public reports submitted to the Affirmative Action Agency are designed to facilitate a process of organisational change (Hunter, 1992). By requiring organisations to compile a statistical profile of their work force, the legislation aimed to increase management's awareness of women's employment status in the organisation (Eisenstein, 1990). The setting of objectives and forward estimates in the public reports are then assumed to flow naturally from the statistical analysis. In practice, the Agency does not focus on whether numerical goals have been achieved when reviewing the reports submitted each year, nor does the Agency hold firms to account for discrepancies between goals and outcomes.

This dispute about the nature of the 'targets' is still evident in the 1990s. Poiner and Wills (1991) and Bacchi (1992) argue that those who are vehemently opposed to the principle of affirmative action have deliberately equated goals, targets and forward estimates with quotas to confuse the issue. This tactic can be seen more recently in an article in the popular press summarising one speaker's message at a seminar in a rural Victoria:

(Richard) Farmer said feminists would ensure, either through government regulation or inexorable social pressure, that quotas would be set to ensure equal representation of men and women in every job at every level in every business and government department in the land. Organisations that failed to comply, he said, would be forced to pay some form of punitive taxation.

(Maslen, 1993: 17)

How individuals respond to affirmative action may well be influenced by what they understand affirmative action to be and how it works (Taylor–Carter *et al.*, 1995). The misrepresentation of affirmative action by commentators such as Farmer may be influencing employees' perceptions of affirmative action. This suggests that individuals' understanding should be investigated further in seeking to better understand the practice of affirmative action.

### **3.4.2 The comparable worth principle**

In her article *The Pursuit of Social Justice in Employment: Australia and the United States*, Sawer (1987) argued that although affirmative action programs offered greater hope for women's employment opportunities than the reactive nature of the anti-discrimination legislation they would not, as they stood, achieve employment equity for women. According to Sawer (1987), the form the legislation has taken has meant that the affirmative action policies most likely to emerge as a response to the legislation would reflect a 'shorter agenda' to equal opportunities (Cockburn, 1989).

Sawer (1987: 298) argued that 'affirmative action as presently constituted accepts the existence of occupational hierarchies and attempts to ensure only that group closure is not exercised over ascent of the hierarchy'. As such, it is not surprising that she expected the sorts of policies to flow from the legislation to be efforts to improve women's access to non-traditional jobs and their promotion opportunities. Sawer saw these policies as basically concerned with a 'procedural clean-up' (Davies, 1988, as cited by Cockburn, 1989: 288) rather than challenging the traditional division of labour between women and men and how differently women's and men's labour are valued.

According to Sawer (1987), the gendered nature of the Australian work force would remain largely untouched and the majority of women would still be clustered in low-paid, low-status feminised occupations. Sawer (1987: 291) argued that 'for every female air traffic controller or senior manager there will be thousands of female nurses or secretaries'. She cited demographic trends pointing to the greatest field of employment

growth in Australia as the community service area (a traditionally feminised domain) as evidence to support this claim. Accordingly, Sawyer's view was that no real change in women's employment status would eventuate from the affirmative action policies emerging from the legislation enacted in Australia.

For real changes to occur, Sawyer (1987: 292) argued for the direct implementation of the comparable worth principle; 'that there should be equal pay for work of equal value.' Because of the gendered nature of the Australian work force, Sawyer argued that the only prospect for women's status improving was for work performed in female dominated occupations to be compared to work performed in male dominated occupations using gender-neutral criteria to measure, for example, skills, responsibility, conditions. According to Sawyer (1987), job evaluation had, historically, tended to undervalue skills and responsibilities associated with the female-dominated occupations relative to the skills and responsibilities associated with the male-dominated occupations. It was only if this bias was removed did she see any prospect of women's employment status improving.

### **3.4.3 Fairer trade unionism**

In their book, *Getting Equal*, O'Donnell and Hall (1988) provide a wide-ranging examination of women's position in the Australian labour market. Their discussion covers many dimension of women's employment experiences and reflects their common involvement in the trade union movement. Women's unequal status is detailed from an historical perspective, with particular emphasis on the uneven division of child care and family responsibilities and the continued inequality in education and training between women and men. Their discussion of women's and men's employment prospects is grounded in the context of the broader economic, political and industrial environments in which Australian workplaces operate.

O'Donnell and Hall (1988) noted that anti-discrimination and affirmative action legislation are only one means of addressing inequality between the sexes at work. While

the authors accepted that such legislation was an important means of raising public awareness of the secondary status of women in the workplace, they argued that ensuring fairer employment practices would not necessarily lead to a change the status of women. They cite a number of reasons why legislative action would not be sufficient to effect real change in the status of women. First, they note that women can never compete freely with men as individuals as long as there continues to be an unequal division of domestic work and child care between women and men. Furthermore, according to O'Donnell and Hall, the beneficiaries of the affirmative action legislation will not be the majority of women workers; the beneficiaries will be those few women in professional and managerial positions, where career ladders are already present and educational qualifications are important entry requirements.

The limitations of the legislation are that while it may make certain individual female job candidates more competitive against certain individual male candidates in the career and promotion stakes, it can usually do little for low paid workers in general or for the bulk of women whose chief need may be for low cost child care or for paid maternity leave or better wages.

(O'Donnell & Hall, 1988: 93)

The status of the bulk of women, the authors claimed, would remain unchanged by an insistence on 'fair' employment practices. They argued further that the status of most women can only be improved through changes to the values attached to women's work. In this they concur with Sawyer (1987). O'Donnell and Hall's (1988) perspective was that the problem is an industrial issue. They argued that women's status would only improve with fairer trade unionism; trade unionism that represented women's needs more fully in the industrial arena. The representation by trade unions, according to O'Donnell and Hall, should focus on increasing the value attached to women's work and improving the remuneration associated with it. In this regard, their position is very similar to Sawyer's call for the comparable worth principle.

A number of the arguments put forth by O'Donnell and Hall (1988) were based on their observations of the industrial scenes of Sweden and the United States. They extrapolated from the experiences of women in both these countries to explain the need for improved

industrial representation in the Australian scene. In Sweden, where women were well-represented in an industrial sense, the status of women had improved, whereas in the US, where women had less industrial strength, women's status was relatively lower than in Sweden. There are inherent dangers in this approach as there may be different environmental factors operating in the various countries. At the time O'Donnell and Hall (1988) were writing, Australia had not ratified ILO 156, Workers with Family Responsibilities, and so the family-responsive policies evident in Sweden, which they supported, did not have the same 'legitimacy' in the Australian industrial scene. Ratification by Australia of ILO 156 in 1990 has, however, given greater impetus to the move for more family-friendly policies in Australian workplaces.

#### **3.4.4 Formal rather than substantive equality**

Thornton (1990; 1993) has also written extensively on the regulatory framework concerning equal opportunity in the Australian context. While O'Donnell's and Hall's arguments reflect their involvement in the trade union movement, Thornton's view of affirmative action legislation in Australia is firmly grounded in her legal expertise (Thornton, 1990). The affirmative action legislation is, she argued, a legal reform process in which the concept of collectivised harm (in this case against women) is recognised and which seeks to take a preventative approach to the harm. This makes the legislation to some extent unique as the law, like western medicine, rarely takes a preventative approach to problems (Thornton, 1990: 217). There are limitations, however, to the extent to which prevention can be enforced in the climate of free enterprise that characterises Australia.

Whilst a socialist state might be able to initiate a centralised plan of action, at least theoretically, a liberal free-enterprise society can act only in a piecemeal, workplace centred way unless very strong sanctions are included to ensure wide compliance.

(Thornton, 1990: 219)

As indicated in Chapter 2 the sanctions applying to non-compliance with the reporting requirement of the affirmative action legislation or failure to meet minimum performance

standards (that is, naming in Parliament and non-eligibility for government contracts or assistance) have been criticised as ineffective (O'Donnell & Hall, 1988).

According to Thornton, the arguments put forth by opponents, such as Moens (1985), of affirmative action that the state will dictate to employers whom they should employ were unfounded. The consensus-seeking processes followed by the government in drawing up the legislation led, she maintained, to a fairly weak legislative response; a legislative response which focuses on a notion of formal rather than substantive equality. Thornton's notion of formal and substantive equality bears a strong resemblance to Cockburn's distinction between the short and long agendas to equality. Thornton argued that because there is some notion of an objective definition of 'merit' underscoring the legislation, this leaves the basic structures of society unchallenged. The assumption that the 'best' person will automatically rise to the top, if the organisational processes are made a little fairer, is implicit in the legislation.

Thornton's view is that 'procedural clean-up' actions such as non-discriminatory advertising and interviewing techniques, revising selection and promotion procedures to ensure they are gender neutral and appointing women in non-traditional areas, can only go part of the way towards addressing the problem of inequality of opportunity. In arguing her case that the legislation will not really improve the status of women, Thornton (1990) maintained that the types of affirmative action programs implemented by organisations reflect a notion of formal equality and are basically assimilation programs. That is, they require women to fit in with the masculine culture pervading most organisations. She argued that the able-bodied, heterosexual, Anglo-Celt male norm is still prevalent in the Australian workplace, and those who benefit from the affirmative action policies are those who can become most like the norm. She concludes '(t)he political experience of affirmative action has undoubtedly distorted the ideal of substantive equality' (Thornton, 1990: 17).

### **3.4.5 Different values accorded to women and men**

Burton (1991) has written extensively on EEO Programs in both the public and private sectors. In her book, *The Promise and the Price*, Burton presents a collection of papers she wrote over the period 1983–1989. Burton argued EEO programs have had only limited effectiveness in delivering equitable employment practices and outcomes. An area of particular concern to Burton, also raised by Sawyer (1987) and O'Donnell and Hall (1988), was the different values society accords women and men. She argued that the devaluation of women is implicit in the assessments of work they perform. According to Burton (1991: xi):

the structural subordination of women ... continues to generate inequalities in employment which cannot be addressed simply through programs concentrating on broadening women's employment opportunities.

In this respect, her argument is very similar to Thornton's (1990) and she, too, sees only limited value in the formal approach to equal opportunity.

Burton argued that organisations would opt for a 'shorter agenda' to equal opportunity (Cockburn, 1989) — or as she labelled them, the 'soft' options. These 'soft' options include removing rules which can be shown to be unrelated to performance (for example, the height requirement for police officers), erecting safety signs in several languages and providing training for women to help them 'fit in' with the work environment. But according to Burton (1990: 22) the disadvantage women experience in the workplace doesn't just 'disappear with the elimination of discriminatory rules; it is to practices that we must turn our attention'.

Burton (1991: 25) maintained that rarely would organisations take on the 'harder' policies associated with the 'long agenda' of reassessing the qualities which have been identified as necessary for a job, questioning how the job has been valued for remuneration purposes or trying to redress the historical effect of past practices.

### **3.4.6 Affirmative action in a basically unchanged and unjust society**

In their book, *The Gifthorse: A Critical Look at Equal Employment Opportunity in Australia*, Poiner and Wills (1991) highlight the disparate nature of people's responses to the enactment of equal employment opportunity legislation in Australia. There are, according to Poiner and Wills, three common responses to EEO; those who are vehemently opposed to it, those who see EEO as the 'solution' to all the inequities in our society and those who basically support the principles but don't think the legislation should be examined too closely because any limitations it may have could be used to undermine it. Poiner and Wills (1991) maintained these rather varied reactions had tended to limit the debate surrounding EEO, as proponents of each position argue at cross purposes.

The authors pose the question 'Can the legislation achieve EEO and if so, in what form and at what cost?' Like O'Donnell and Hall (1987), Thornton (1990) and Burton (1991) they, too, appear to subscribe to a longer agenda to equality. They question whether affirmative action policies can achieve equal employment opportunities in what they see as a basically unchanged and unjust society. Poiner and Wills argued that in spite of the affirmative action legislation, the social position and employment opportunities for the majority of women would remain fairly much as they were.

Poiner and Wills claimed that increasing the numbers of women in non-traditional areas had been the sought after goal of affirmative action. The problem with this, they argued, was the assumption that all people aspire to the same employment goals. In discussions of women's experiences in the workplace, this problem of the 'male as norm' is one that has been raised by a number of authors (Marshall, 1986; Gallos, 1989; Tavris, 1993). Equality of opportunity in those terms may translate to opportunities equal to those who already have them and on terms set by those already in powerful positions. As white males have traditionally dominated paid employment in Australia, this means that the male standard becomes the norm against which women's experiences are compared, and found

wanting. Monitoring women's entry into non-traditional employment is, Poiner and Wills maintained, a very limited mode of measurement. They also voiced concerns raised by Thornton (1990) and Burton (1991) that the traditional patterns are not then challenged. Instead, women are simply expected to 'fit in' with the current practices.

As well, Poiner and Wills echo the sentiments of O'Donnell and Hall (1987) in their description of who they see as benefiting from the legislation. The legislation had, according to them, benefited only a small proportion of women and in predictable ways. The beneficiaries were those women entering middle management and the few women entering traditionally male domains who had been able to meet set, male, standards. Importantly, they recognised the need to look more closely at the question 'Has the legislation been what women wanted?' They argued that more needs to be known about what 'the subject groups want' (Poiner & Wills, 1991: 100) and point to this as a direction of research that does need to be done to 'flesh out' our understanding of affirmative action in the Australian context.

### **3.4.7 How organisations can respond to affirmative action**

Kramar's (1991) approach to reviewing the affirmative action legislation was somewhat different to the previous studies as she looked more closely at what organisations were doing to comply with the legislation. Kramar (1991) argued that although the affirmative action legislation is an important mechanism to ensure the removal of discriminatory actions against women in the employment situation, it has had only limited effectiveness.

The factors hindering its success, Kramar argued, are manifold. The first factor she cites is the major restructuring many organisations underwent at the same time as the legislation was being phased in. According to Kramar, in the late 1980s many Australian companies were having to restructure in response to changes in their external environments, particularly changes to the Australian economy. A common response was restructuring the company on a divisional basis, which meant responsibility for affirmative action was often devolved to the divisional level. One outcome of this

divisional responsibility could be, Kramar argued, that affirmative action programs are narrowly defined in a numerical sense and too focused on ‘outcomes’, rather than being an integral part of the central planning process. She uses the example of the Australian Public Service to support her claim:

The detrimental results of devolving responsibility for affirmative action down to divisional units are evident in the Australian Public Service where it is reported EEO is losing credibility, there has been a net reduction in resources devoted to EEO...EEO is not seen as a priority ...

(Kramar, 1991: 65)

The importance of a centralised affirmative action program to which senior management are clearly committed has been raised by a number of authors (for example, Smith & Hutchinson, 1995).

Another factor Kramar identifies as impeding the effectiveness of the affirmative action legislation has been the efforts by employers to develop more flexible employment arrangements — arrangements that many employers report proudly as their most significant affirmative action achievements! The labour market segmentation flowing from these new arrangements was very much along gendered lines. Kramar maintained the growth of part-time and casual workers had, in effect, created a secondary labour market as some research had found that casual and part-time workers (the vast majority of whom are women) have very limited access to training or career paths (Department of Industrial Relations, 1993).

Kramar also identified the limited knowledge about EEO and affirmative action that many employers have as a factor reducing the effectiveness of the legislation. The comments made by many companies in their public reports to the Affirmative Action Agency indicate how poor some people’s understanding of the legislation actually is.

Statements on the reports also indicate many employers don’t believe they discriminate, and therefore believe they don’t have to develop an affirmative action program.

(Kramar, 1991: 66)

From Kramar's research, direct discrimination appeared to be recognisable to many. An understanding of the nature and impact of indirect discrimination, however, appeared to be somewhat less developed.

Nor, according to Kramar, can women's educational and training choices be overlooked as a factor limiting the impact of affirmative action. Social pressures continue to bear on women to conform to traditional (gendered) patterns of employment (Kramar, 1991). The tendency for women to continue to be trained, and seek employment, in what have been traditional female occupations, rather than training in and applying for jobs in the traditional male occupations, may work against any significant breakdown of occupational segregation.

Having identified the barriers limiting women's employment opportunities, Kramar then presented a range of strategies developed by a sample of companies to address these problems. As the legislation had only been in place for such a short period at the time she was writing, whether or not these strategies had been effective was not the focus of Kramar's paper. Rather, she was highlighting the initiatives taken by companies to show how these problems have been addressed at the company-level.

Each of the above-mentioned authors (Moens, 1985; Sawer, 1987; O'Donnell & Hall, 1988; Thornton, 1990; Burton, 1991; Poiner & Wills, 1991 and Kramar, 1991) has made a valuable contribution to the theoretical debate surrounding affirmative action and the implications of this public policy response for unequal opportunities in Australia. Most of the literature referred to above was generated before affirmative action programs had been in place for any length of time (if at all), so it was difficult to speak to the practice of affirmative action in the Australian context. Nearly ten years after the enactment of the affirmative action legislation, there is experience of affirmative action in practice that warrants inclusion in the ongoing debate surrounding affirmative action.

### **3.5 The limits of affirmative action**

Some research concerning the experiences of organisations in various aspects of implementation of affirmative action programs has been carried out. Most of this research has been under the auspices of the Affirmative Action Agency as part of its 1992 'Effectiveness Review' of the affirmative action legislation (Macquarie University, 1991, 1992, 1993; Braithwaite, 1992; Swinburne University of Technology, 1993) and is discussed in detail in Chapter 5. It is worth noting here, however, that these studies are more empirically-based than the largely theoretical studies cited previously.

There has been limited research done independently of the Affirmative Action Agency. One independent study exploring the limits of the affirmative action legislation in Australia was by Crowley *et al.* (1992). In the study, the authors focused on one company, Argyle Diamonds. The authors claimed Argyle Diamonds represented an interesting case study, as it was apparently an organisation which was committed to both the 'spirit and the letter' of the affirmative action legislation, and yet little change had occurred in the traditional patterns of female and male employment within Argyle since it had released its first official EEO Policy Statement in 1987. Women were still poorly represented in Argyle as a whole and tend to be clustered in low level positions. Taking a numerical, outcomes-based approach to assessing 'effectiveness' such as this, Argyle would seem to have had only limited success with its affirmative action initiatives.

In their investigations, Crowley *et al.* (1992) interviewed staff from both the Perth and Kununurra sites of Argyle Diamonds, as well as reviewing relevant company documents, including the mission statement and operating philosophy, personnel records and employment statistics to explore the experience of affirmative action in the company. Unfortunately, they were unable to survey the work force in total because management sought to minimise the disruption to employees of the research. The findings of Crowley *et al.* (1992) indicate that although Argyle had comprehensive policies in place to reduce discriminatory practices and ensure all personnel practices were consistent with the merit principle and a 'procedural clean up' (Cockburn, 1989), there was still an attitude of

reluctance to employ women common among staff. This attitude, they argue, may explain why Argyle had not been able to increase the representation of women at the supervisory and management levels within the organisation. An issue the authors take up in the study is the indirect manner in which Argyle had tried to address this problem and the limited success such indirect efforts had.

Argyle recognises even now, however, that there are superintendents who are extremely reluctant to employ women. While continual attempts are made to change discriminatory attitudes, such practices have not been addressed through disciplinary action or dismissal, but rather through the provisions of positive incentives for behaviour compatible with the organisational culture.

(Crowley *et al.*, 1992: 11)

Another issue the authors raised is the faith the human resource management division at Argyle place in the concept of 'merit' in their employment practices. Argyle seems to subscribe to a notion of an objective and bias-free approach to measuring performance and assessing future potential — that is, it has tended to the short agenda of equal opportunities (Cockburn, 1989). This view, Crowley *et al.* argued, is rather naive and does not take account of the growing evidence in the literature that suggests a bias against women inherent in the basically 'masculine nature of the traditional definition of work and its organisation' (Crowley *et al.*, 1992: 57). Senior management at Argyle seemed to believe that as long as 'objective' employment processes were adhered to, women would rise naturally to the top. This, Crowley *et al.* (1992) maintained, is insufficient to affect change as is clearly demonstrated by the inability of Argyle to alter the traditional patterns of women clustered in the lower levels of the organisation.

### **3.6 Affirmative action as a human resource management issue**

In her review of affirmative action, Braithwaite (1993) argues that equal employment opportunity and affirmative action can be distinguished at the theoretical level by procedural and substantive interpretations. Her use of procedural and substantive

interpretations is similar to the formal and substantive conceptualisations of equality detailed by Hunter (1992) (see section 3.2).

The procedural interpretation holds that men and women must be treated equally in employment decision making. This interpretation is compatible with the term equal employment opportunity, but not with the term affirmative action. The substantive interpretation includes an 'affirmative effort to promote the interests of the previously underrepresented groups' (Edelman *et al.*, 1991: 76). The substantive interpretation makes way for affirmative action programs that give preferential treatment to women as a means of correcting the past effects of discrimination.  
(Braithwaite, 1993: 330)

Drawing on data she had collected as part of the Effectiveness Review of the affirmative action legislation (Braithwaite, 1992; to be discussed in more detail in Chapters 4 and 5) and data from the Australian Workplace Industrial Relations Survey (AWIRS), Braithwaite (1993) examined the relationship between compliance with the eight steps outlined in the legislation and positive outcomes for women's work force experiences. Her study found that the data from the two sources indicated there appeared to be a relationship between procedural compliance with the affirmative action legislation and companies adopting practices that attempted to meet the needs of women in the workplace (such as introducing flexible work arrangements, child care and skills development programs). Companies which were reporting their efforts to address the eight steps outlined in the legislation appeared to be making more effort to make real changes to their workplace than those companies seemingly making little effort to comply with the eight steps. Braithwaite (1993) argued that the procedural approach encouraged in the legislation would thus seem to be vindicated.

Braithwaite (1993) did, however, qualify her findings as she found that other factors, besides procedural compliance, could have been driving these accommodating practices. In particular, she identified organisational and work force characteristics influencing both procedural compliance and accommodating practices. Some industry groups were more likely to adopt accommodating practices than others and accommodating practices 'were more likely to be found where they were financially viable — in large organisations and where a significant proportion of the work force are women' (Braithwaite, 1993: 350). As well, organisational commitment to human resource management was found to be an

important factor accounting for both procedural compliance and the provision of accommodating practices. Companies demonstrating a commitment to their human resources were more likely to make efforts to improve employment opportunities for women than those with a more ambivalent approach to their human resources.

From the literature reviewed above, equality of opportunity and affirmative action are clearly complex issues. It requires substantial effort on the part of organisations to understand these issues, develop policies and implement them. Some changes needed are radical. The question this prompts is whether companies have the resources, knowledge and will to address the issues?

### **3.7 Summary**

Debate concerning affirmative action has been ongoing since the legislation was first mooted in the early 1980s. Much has been written about the limitations of the legislation as a means of improving employment opportunities for women. Sawyer (1987), O'Donnell and Hall (1988), Thornton (1990), Poiner and Wills (1991), Burton (1991) and Kramar (1991) all argue that the legislative approach to affirmative action is insufficient to effect real change in the status of women. Their arguments, however, tend to be debated at the theoretical level, which can be understood given the time at which they were writing. The affirmative action legislation had been relatively recently implemented and all of the relevant organisations were not yet covered by it. Relatively little attention has focused on what has happened in the Australian context in practice, in terms grounded in individuals' experiences within organisations (Rousseau, 1988). Two studies which have taken a more empirical approach are Crowley *et al.* (1992) and Braithwaite (1993). Crowley *et al.* (1992) investigated the experiences of one company, Argyle Diamonds, in implementing affirmative action, and the problems it incurred in doing so while Braithwaite (1993) focused on the levels of compliance with the affirmative action legislation demonstrated by organisations. From her research, Braithwaite found that firms with a strong commitment to human resource management

are making more substantive efforts to improve opportunities for women than those companies without such commitment.

As the legislation has now been in place for ten years, it seems timely to expand our knowledge base about what is happening in the workplace. 'How have employers responded to the legislation? How are the employees affected by the legislation responding to affirmative action programs in their workplace? What informal processes are operating to impede affirmative action?' are clearly questions that need to be addressed in this context.

The issues raised in the theoretical debate point to important questions which should be addressed in empirical research. What sort of affirmative action policies are being implemented by companies? Have Australian companies opted for the soft options in implementing affirmative action programs as Burton (1991) suggests? Have they simply tried to remove overtly discriminatory practices and to increase the number of women in non-traditional occupations, rather than challenging the traditional order? Have they tackled the more difficult issues of revaluing women's work which some authors saw as so important in effecting real change in the status of women? Do employees understand the nature of affirmative action, or do they think, like Moens (1985), that affirmative action entails quotas? Has the legislation had only a 'piecemeal' effect as Thornton (1990) argued? Are affirmative action policies perceived to be only of value to women in professional and managerial positions, as O'Donnell and Hall (1988) and Poiner and Wills (1991) argue? How do women perceive their employment opportunities?

Those studies that have considered employees experiences of affirmative action in the workplace (Crowley *et al.*, 1992; and Braithwaite, 1993) also suggest issues which need to be explored further. Are policies of the 'procedural clean-up' type that Argyle used perceived by employees to be having any impact on employment opportunities for women? Are companies' affirmative action programs addressing the needs of the women? Is it, as Sawer (1987), O'Donnell and Hall (1988) and Poiner and Wills (1991)

argue, that the type of affirmative action programs being implemented are simply not relevant to the bulk of women trying to cope in a basically unchanged and unjust society?

These questions were pivotal in guiding the empirical research reported in this thesis and are explored further in the remaining chapters.