This paper updates Current Issues Brief No 9 of 1983, Basic Paper No 3 of 1985 and Basic Paper No 9 of 1986-87. Johanna Sutherland, then of the Law and Government Group, Catherine Wildermuth, then of the Education and Welfare Group and Sue Bromley then Principal Legal Officer, Human Rights Branch, Attorney-General's Department, read the 1987 paper and provided valuable comments. This updated paper has been read and commented on by Dy Spooner, Dennis Argall, Ian Ireland, and Geoff Winter. My thanks for this assistance and that provided by Carole Wiggan, Cathy Madden, Paula O'Brien and David Anderson.

Special thanks to Kate Matthews.

Note on style

Only where an Act is referred to in the text by its full title and date, is it italicised. Some States use commas in the titles of their Acts; the Commonwealth and some other States do not.

In the sections on the States, all Acts referred to are the Acts of that State, unless otherwise indicated by a note in brackets eg. (Cth) indicating a federal Act.
Executive Summary

Sex Discrimination Legislation in Australia covers, in summary form, the provisions of Federal and State Acts which have the objective of prohibiting discrimination on the grounds of sex, marital status, pregnancy or related grounds. The background and objectives of the legislation are outlined and differences in the coverage and scope of the various Acts are highlighted.

In assessing the effectiveness of the legislation, comparisons between States and Federal provisions concerning employment, education, religious and charitable bodies, clubs, sport, superannuation, insurance, accommodation, advertising and other areas are made.

In its concluding sections, the paper focuses on:

- some problems which have arisen over time as case law has developed;
- some measures by which Commonwealth and State legislation may be considered to be succeeding (i.e. progress towards the goal of equal opportunity);
- the persistence, nonetheless, of disadvantages for women including the fact that Australia has the highest incidence of occupational segregation among OECD countries;
- the need for award restructuring to assist in addressing such imbalances, and
- the progress towards Equal Employment Opportunity in the Australian Public Service.

The paper notes that legislation alone cannot achieve the goal of equal opportunity for women in the work force and other areas: community education and the National Agenda programs are also important.

Sex Discrimination Legislation in Australia is set out as a reference work with the Table of Contents indicating the sections on each Federal and State Act and the subsequent comparative sections on specific subjects, grounds and areas.

The paper can be used readily in conjunction with the legislation to provide a more detailed study of specific provisions, as the Comparative Table of Acts at Appendix 1 gives the relevant section number for each of the Acts.
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BACKGROUND: NATIONAL COMMITTEE ON DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

Following the ratification by the Australian Government in June 1973 of the International Labour Organisation Convention No.111 - the Convention on Discrimination (Employment and Occupation) 1958 - a National Committee on Discrimination in Employment and Occupation and six State Committees were established. A Committee for the Northern Territory was established later in 1979. The Convention binds the Australian Government to seek to eliminate discrimination on seven grounds - race, colour, sex, religion, political opinion, national extraction and social origin - in the areas of employment and occupation. Employers' and workers' organisations, vocational guidance and training, placement services, administrative instructions or practices, employment advertisements and superannuation were included in the Committees' areas of concern.

The Committees investigated both complaints received on grounds specified in the Convention and complaints on grounds not specified, such as age and disability. To 1984, the Committees received more complaints of discrimination on the ground of sex than on any other ground. In 1982-83, 64.6 per cent of complaints on grounds specified in the Convention were complaints on the ground of sex. Of these complaints, approximately 60 per cent were from females and 40 per cent were from males.1

The Committees worked through consensus and conciliation, and a system of tripartite representation: each State Committee had representatives of the Commonwealth and State Governments, employers' organisations and trade unions. The Committees did not have statutory powers. However the National Committee could ask the Attorney-General to table in Parliament a report of a complaint which it was unable to resolve, including the naming of the discriminating party.2 In practice, however, cases were usually resolved before that stage was reached.

The passage of the Commonwealth Sex Discrimination Act 1984, and its implementation from 1 August 1984, led to arrangements for referral of complaints, where possible, on the grounds of sex, marital status and pregnancy to the newly set up Human Rights Commission or to the State Commissioners for Equal Opportunity (or President of the Anti-Discrimination Board in the case of New South Wales). The State Committees still provided avenues for complaints on these grounds for State government employees in States which did not have sex discrimination legislation.

Moves to co-locate the National and State Committees with the Human Rights Commission and with the State Commissioners for Equal Opportunity, and the NSW Anti-Discrimination Board, were then made with the intention of providing a 'one-stop shop' approach to the handling of discrimination complaints.

With the passage of the Human Rights and Equal Opportunity Commission Act 1986, the functions of the National and State Committees on Discrimination in
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Employment and Occupation passed to the Human Rights and Equal Opportunity Commission. The reconstituted Commission is now empowered to handle matters relating to complaints on the grounds of the seven areas of discrimination of ILO Convention 111. Nine other grounds of discrimination were included in the concerns of the National and State Committees. Under the Act, such additional grounds of discrimination could be added to the Commission's areas of responsibility by regulation, and this occurred in 1989 under the Human Rights and Equal Opportunity Regulations (Statutory Rules 1989 No.407).

Provision is made under the Act for the establishment of at least one advisory committee to advise the Commission in relation to the performance of its functions and to report on action which needs to be taken by Australia in order to comply with ILO Convention 111.

COMMONWEALTH LEGISLATION

Australia signed the United Nations Convention on the Elimination of All Forms of Discrimination Against Women on 17 July 1980. Consultations took place between the Commonwealth and the States before ratification by Australia on 28 July 1983. Article 2(b) of the Convention provides that States parties should:

... adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.

On 26 November 1981, Senator Ryan introduced a Sex Discrimination Bill as a Private Member's Bill. This Bill was not proceeded with, but on 12 October 1982 a joint statement was issued from the Acting Attorney-General, Mr Neil Brown, and the Minister for Home Affairs and the Environment, Mr Tom McVeigh, announcing the planned introduction of a Sex Discrimination (Commonwealth Employees) Bill. This Bill would extend protection against discrimination on the ground of sex or marital status to Commonwealth employees throughout Australia, and would complement existing State legislation. However, this Bill was not introduced into Parliament before the change of government in March 1983.

1. Sex Discrimination Act 1984

On 2 June 1983 Senator Ryan introduced the Sex Discrimination Bill 1983 into the Senate, and this passed through both Houses (after redrafting and some amendments) by May 1984. The Sex Discrimination Act 1984 came into force on 1 August 1984. Its objectives are:
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(a) to give effect to certain provisions of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women;

(b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs;

(c) to eliminate, so far as is possible, sexual harassment in the workplace and in educational institutions; and

(d) to promote recognition and acceptance within the community of the principle of the equality of men and women.

The Act prohibits both direct and indirect discrimination on the ground of sex, marital status or pregnancy. Discrimination on the ground of sex or marital status is defined as having occurred:

- if the aggrieved person is treated less favourably by reason of that person's sex or marital status, or a characteristic appertaining to or generally imputed to persons of that sex or marital status, or
- if the aggrieved person is required to comply with a requirement or condition with which a substantially higher proportion of persons of the opposite sex or different marital status are able to comply, which is not reasonable, having regard to the circumstances of the case, and with which the aggrieved person does not or is not able to comply.

Discrimination on the ground of pregnancy is defined as having occurred:

- if the aggrieved person is treated less favourably by reason of her pregnancy or a characteristic appertaining to or generally imputed to pregnant women, and where the less favourable treatment is not reasonable in the circumstances; or,
- if the aggrieved person is required to comply with a requirement or condition with which a substantially higher proportion of persons who are not pregnant comply or are able to comply, which is not reasonable
having regard to the circumstances of the case, and with which the aggrieved person does not or is not able to comply.

However, a man cannot claim to have been discriminated against by reason only of not being granted the same rights or privileges accorded to a woman in connection with pregnancy or childbirth.

The areas in which discrimination on the ground of sex, marital status or pregnancy are unlawful under the Act include employment, education, the provision of goods and services, the availability of facilities or accommodation, and the disposal of land or the terms and conditions applying to that disposal. The employment provisions apply also to applications for employment, commission agents, contract workers, partnerships, licensing or qualifying bodies, employment agencies, trade unions and registered organisations under the Conciliation and Arbitration Act (now the Industrial Relations Act). Commonwealth programs and Commonwealth public servants exercising powers under Commonwealth Acts are covered by the provisions.

The Act also makes sexual harassment unlawful in the areas of employment and education. Sexual harassment is defined as an unwelcome sexual advance, or an unwelcome request for sexual favours, or other unwelcome conduct of a sexual nature directed to a person, where that person has reason to believe that rejecting or refusing the advance or request or taking objection to the conduct would disadvantage that person in any way in connection with employment or work, or possible employment or work, or in connection with the person's studies or application for admission to an educational institution as a student. Other forms of sexual harassment are not dealt with in the Act, but when introducing the Bill in 1983 the Government announced plans to give the matter consideration and to seek the views of women's organisations.

The Act established the position of a Sex Discrimination Commissioner, and set additional functions for the Human Rights Commission (now the Human Rights and Equal Opportunity Commission). These functions include inquiring into and making determinations on matters referred by the Minister or Commissioner, granting exemptions, promoting understanding and acceptance of, and compliance with, the Act, examining enactments or proposed enactments to ensure consistency with the Act, and reporting to and advising the Minister on matters relating to discrimination on the grounds of sex, marital status or pregnancy, or discrimination involving sexual harassment.

The Commissioner is required to inquire into alleged infringements on behalf of the Commission and must endeavour to effect a settlement by conciliation. The Commissioner may decide not to inquire into an act if:

he or she is satisfied that the act is not unlawful;
he or she is of the opinion that the aggrieved person or persons does not or do not desire the inquiry to continue;

more than 12 months have elapsed since the act; or

he or she is of the opinion that the complaint is frivolous, vexatious or lacking in substance.

If the Commissioner decides not to inquire, or continue to inquire, into a complaint, the complainant is to be informed in writing of that decision and the reasons for it, and of the complainant's right to serve notice in writing within 21 days requiring the Commissioner to refer the complaint to the Commission. The Commissioner may obtain information from such persons and make such inquiries as thought fit, may require the furnishing of relevant information and documents and may require attendance at a compulsory conference.

Inquiries may be referred to the Commission by the Commissioner or by the Minister. The Commission may hold a single inquiry when the subject matter of two or more complaints is substantially the same, or may determine that a complaint should be dealt with as a representative complaint. The Commission has no legal power to enforce a determination. If a complaint is unresolved through conciliation, the Commission or complainant may institute proceedings in the Federal Court to give effect to a determination of the Commission. Additionally, failure to provide information or actuarial or statistical data, failure to attend a conference as directed and obstruction of the Commission are offences under the Act and maximum penalties of $1000 for individuals or $5000 for organisations or groups may be incurred. Maximum penalties of $2500 or imprisonment for three months for an individual, and $10 000 for a body corporate, are set for offences of false or misleading information or victimisation. Advertising in such a way as to indicate an intention to do an act that is unlawful under the provisions of the Sex Discrimination Act is also an offence with maximum penalties of $1000 for an individual or $5000 for a body corporate.

Legislation passed through both Houses of Parliament by the end of 1986 replacing the Human Rights Commission with the Human Rights and Equal Opportunity Commission. The Commission has been re-located in Sydney and is responsible for implementing the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and for functions exercised by reference to ILO Convention 111 and four other international instruments. It may also be given functions under future human rights legislation. The new Commission is made up of a President, the Human Rights Commissioner, the Race Discrimination Commissioner, the Sex Discrimination Commissioner and the Privacy Commissioner. The Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986 amended the Sex Discrimination Act 1984 to substitute the new Commission for the former Human Rights Commission, and to provide that the Sex Discrimination Commissioner is not subject to the direction of the Commission.
in the performance of functions under the Sex Discrimination Act. Other amendments included an increase in the penalty for misuse or wrongful disclosure of information by Commission staff to $5000 or imprisonment for one year or both.

Functions of the Human Rights and Equal Opportunity Commission also include undertaking research and educational programs, examining enactments, reporting on what laws should be made on matters relating to discrimination on the ground of sex, marital status or pregnancy, or involving sexual harassment, and preparing guidelines for the avoidance of discrimination on these grounds.

In 1986 the Sex Discrimination (Consequential Amendments) Act was passed to amend certain Commonwealth Acts which contained provisions inconsistent with the Sex Discrimination Act 1984 in that discrimination was made on the basis of sex or marital status. Section 40 of the Sex Discrimination Act had provided a two-year exemption for acts in direct compliance with any other Commonwealth, State or Territory law in force at the commencement of the Act, and s 40(3) allowed for regulations to be made in relation to exemptions for specified legislation. Commonwealth legislation has been reviewed to identify discriminatory provisions based on sex or marital status and a number of Acts and ACT Ordinances have been amended. Exemptions from the provisions of the Sex Discrimination Act remain in force for the Social Security Act 1947, the Seamen’s War Pensions and Allowances Act 1940 and the Papua New Guinea (Members of the Forces Benefits Act 1957. Originally in the 1984 Act the Compensation (Commonwealth Government Employees) Act 1971 and the Repatriation Act 1920 were also exempted, but the Commonwealth Employees’ Rehabilitation and Compensation Act 1988 and the Statute Law (Miscellaneous Provisions) Act 1988, respectively, removed these exemptions. Other discriminatory provisions in Commonwealth, State and Territory legislation have been preserved for fixed periods by regulations made pursuant to s.40(3) of the Act but these regulations are reviewed progressively, and the number of exemptions reduced. Legislation exempted under s 40(1)(a) and 40(1)(b) until 31 July 1991 is listed in Appendix 3. 5

In 1989 the Government introduced a Sex Discrimination Amendment Bill designed to remove the provision exempting superannuation from the requirements of the Sex Discrimination Act 1984 (s 41) and to replace this with more limited exemptions. The Bill was passed by the House of Representatives on 31 May 1989 but debate was adjourned in the Senate after the Second Reading on 7 June 1989, and the Bill subsequently lapsed. It was re-introduced into the House of Representatives by the Attorney-General, the Hon Michael Duffy on 12 September 1990 in substantially the same form. One proposed section from the earlier Bill, to permit the remaining superannuation exemptions to be repealed by regulation, had been opposed by the Opposition and was not included in this Bill.

The Sex Discrimination Act provides that State anti-discrimination legislation should operate concurrently with Commonwealth legislation. This provision mirrors an amendment to the Commonwealth Racial Discrimination Act 1975, made after the decision of the High Court in Viskauskas v Niland which held that provisions of
the NSW Anti-Discrimination Act dealing with racial discrimination were inconsistent with the Commonwealth Act and were, to the extent of the inconsistency, rendered inoperative. Under the Sex Discrimination Act, if a person has taken action under such a State or Territory law, then that person is not entitled to institute a proceeding on the same matter under the Commonwealth legislation. (However, if an action taken under Federal legislation does not succeed, a complainant may still have recourse to State legislation). A person may be prosecuted or convicted under either the State or Commonwealth legislation, but not both, for the same action or omission. The strengthening of Commonwealth/State co-operative arrangements for the investigation, attempted conciliation and determination of complaints was envisaged, so furthering the development of the 'one-stop shopping' concept.

The Human Rights and Equal Opportunity Commission is now located in Sydney, with regional offices in Brisbane, Hobart and Darwin. State offices of the Commissioners for Equal Opportunity in South Australia and Western Australia, the Equal Opportunity Board in Victoria, and the Anti-Discrimination Board in New South Wales act on behalf of the Human Rights and Equal Opportunity Commission and receive some Commonwealth funding for this purpose. The co-operative arrangements are reflected, for example, in 1985 amendments to the NSW Anti-Discrimination Act which provide that certain functions under Commonwealth Acts relating to human rights in New South Wales (including the Sex Discrimination Act 1984) may be delegated to the NSW Anti-Discrimination Board.

In 1988-89 575 complaints were lodged under the Sex Discrimination Act compared with 440 complaints in the previous year. Women complainants continued to outnumber men by 409 to 52 with eight complaints from group organisations. The predominant area of complaint related to employment. Of these complaints, 79 per cent were on the grounds of sex discrimination or sexual harassment and the remainder on the ground of pregnancy and marital status. The majority of cases were considered to be successfully conciliated with a mutually agreed settlement or with the complaint not proceeded with or withdrawn (96.8 per cent) and only 3.2 per cent of cases needed to be referred for hearing 'the most expensive and traumatic way of reaching a settlement'.


Senator Ryan's 1981 Sex Discrimination Bill included provision for affirmative action in public and private employment. This Part was omitted from the Sex Discrimination Act 1984. Instead, the Government decided on a course of public discussion and consultation before introducing affirmative action legislation. A Green Paper, Affirmative Action for Women: A Policy Discussion Paper, was presented to Parliament by the Prime Minister, Mr Hawke, on 5 June 1984. This outlined the reasons, or need for affirmative action and the proposed elements of affirmative action programs, as well as the Government's plans for a voluntary pilot program. The Government also established a Working Party with members
representing the Government and Opposition, Business, Trade Unions, Women's Organisations (from the National Women's Consultative Council) and Higher Education Institutions.

The Pilot Program commenced in July 1984 and at the end of May 1985 a Progress Report was issued. The Report of the Working Party on Affirmative Action Legislation was presented to Parliament by the Prime Minister, Mr Hawke, on 28 November 1985 at which time he made a Ministerial Statement announcing a National Agenda for Women, and the Government's acceptance of the recommendations for affirmative action legislation and supportive measures.

On 19 February 1986 the Prime Minister, Mr Hawke, presented the Affirmative Action (Equal Employment Opportunity for Women) Bill 1986. The supportive measures recommended by the Working Party in the areas of education, child care and legislative restrictions to women's employment were also announced in the Prime Minister's Second Reading Speech.

The Affirmative Action (Equal Employment Opportunity for Women) Act 1986 came into effect on 1 October 1986. It requires higher education institutions and relevant employers to develop and implement affirmative action programs. An affirmative action program is defined as a program designed to ensure that:

(a) appropriate action is taken to eliminate discrimination by the relevant employer against women in relation to employment matters; and

(b) measures are taken by the relevant employer to promote equal opportunity for women in relation to employment matters.

'Discrimination' means discrimination as defined in section 5, 6 or 7 of the Sex Discrimination Act 1984 (Cth).

A 'relevant employer' means a higher education institution which is an employer, or a person, body or association which employs 100 or more employees in Australia. The term does not include the Commonwealth, a State, a Territory, an authority or a voluntary body.

A 'higher education institution' is defined as a university, college of advanced education or other institution of tertiary education (other than a technical and further education institution within the meaning of the Commonwealth Tertiary Education Commission Act 1977. This was later amended to read within the meaning of the Employment, Education and Training Act 1988). The Affirmative Action (Equal Employment Opportunity for Women) Amendment Act 1989 extended the coverage of the Act to amalgamated educational institutions established after 31 December 1988 where before amalgamation at least one of the institutions was a higher education institution and therefore a relevant employer in terms of the Act.
Higher education institutions were required to commence the development and implementation of affirmative action programs for women in October 1986. Companies employing more than 1000 people were required to commence their programs by 1 February 1987, companies with over 500 and under 1000 employees were required to commence their programs by 1 February 1988 and companies with over 100 and under 500 employees by 1 February 1989. Staff employed by subsidiary companies were taken into account when calculating numbers of employees.

Affirmative action programs are to include eight steps which involve:

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

For the purposes of this provision:

'forward estimate' is defined as a quantitative measure or aim which may be expressed in numerical terms, designed to achieve equality of opportunity for women in employment matters, being a measure or aim that can
reasonably be implemented by the relevant employer within a specified time; and

'objective' means a qualitative measure or aim, expressed as a general principle, designed to achieve equality of opportunity for women in employment matters, being a measure or aim that can reasonably be implemented by the relevant employer within a specified time.

An affirmative action program may contain any other provision which the relevant employer thinks fit which is not inconsistent with the eight steps or the purpose of the Act. The Act specifically states, however, that nothing in it 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.

The Act provided for the establishment of the office of a Director of Affirmative Action whose functions include advising and assisting employers in the development and implementation of programs, and the issuing of guidelines for this purpose; the monitoring and evaluation of reports and programs; research, educational programs and promotion of affirmative action through public discussion and community information; reviewing the effectiveness of the Act; and reporting to the Minister. The Director must submit a report to the Minister for Industrial Relations within six months after each 31 May on the operations of the Director during that year to 31 May. The Director may also submit other reports on matters relating to the operations, powers or functions of the Director. Reports are to be tabled in Parliament within 15 sitting days of receipt.

Employers are required to prepare a public report and a confidential report on the development and implementation of the program. Public reports are to provide statistics and related information, including the number of employees of either sex and their types of job or job classifications, and an outline of the processes to develop and implement the affirmative action program. Public reports are to be made available by the Director to a member of the public on request.

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

The Director may request permission from employers to make information from the confidential report available to the public or available for use in a report of the Director. The Director, or persons employed by the Director, may not reveal information from confidential reports without consent, and the maximum penalties for so doing are $25000 or imprisonment for three months, or both. This is the heaviest penalty provided for in the Act and applies only to misuse of information by the Director or staff. It is for the protection of employers implementing affirmative action programs.
The Director may grant extensions of time to employers for the lodging of private and confidential reports, where such a request has been made and where the Director considers there are reasonable grounds for extending the period. If, in the opinion of the Director, the information provided in a report fails to comply with the provisions of the Act, the Director may by notice in writing request a relevant employer to provide further information within such time as specified in the notice. Failure to submit a public or confidential report to the Director as required, or failure to provide further information as required may result in the Director naming the employer, in the Director's Report, as having failed to provide the report or further information. This is the main sanction against employers in the Act.

The Affirmative Action Agency was established in October 1986, and in November 1989 presented its third annual report. During the year the final phase of implementation had occurred, covering private sector organisations with 100-499 employees, and the Agency was able to report that all higher education institutions and 97 per cent of private sector organisations had reported as required by the Act. The sanction of naming companies who had failed to report was applied in the case of eight companies.

3. Public Service Reform Act 1984

The Public Service Reform Act 1984 (Cth) inserted a new section (s.22B) into the Public Service Act 1922 to provide for the commencement, development and implementation of equal employment opportunity programs throughout the Australian Public Service. This section of the Act came into operation on 1 October 1984 and Commonwealth government departments, statutory authorities with staff employed under the Public Service Act 1922, and statutory authorities for which the Public Service Board has statutory responsibility in relation to terms and conditions of employment of staff, were required to establish Equal Employment Opportunity (EEO) programs to conform with provisions of the Act. In accordance with the Act, an EEO program must include:

(a) examination of practices in relation to employment matters in the Department to identify -

(i) any practices that unjustifiably discriminate against women or persons in designated groups; and

(ii) any patterns (whether ascertained statistically or otherwise) of inequality of opportunity in respect of women or persons in designated groups;

(b) eliminating any practices, and eliminating or ameliorating any patterns, so identified;
informing officers and employees in the Department, and relevant staff organisations, of the contents of the program and of the results of any review of the program;

collecting and recording information, including statistical information, relevant to the operation of the program;

assessing the effectiveness of the program by comparing information collected in relation to the results of the program with the indicators against which the effectiveness of the program is to be assessed; and

giving effect to any guidelines on EEO programs issued by the Public Service Board.

Programs are to relate to such 'employment matters' as the selection, promotion, transfer, training and development, and conditions of service of women members of staff and those in designated groups. 'Designated groups' at this stage are Aboriginal people, people with disabilities and people whose first language is not English.

In addition, the Merit Protection (Australian Government Employees) Act 1984 provides for a Merit Protection Review Agency to investigate complaints of discrimination.

The first programs prepared in compliance with the Public Service Act's EEO provisions were completed during 1985-86. Sixty-five departments and authorities were then required to develop programs and forward copies to the Board. The Annual Report 1986-87 showed that only 45 of these had approved programs; the remaining twenty, employing approximately 55,000 staff, had not satisfactorily completed revisions of their programs. By 30 June 1989 all Australian Public Service departments had lodged EEO programs. At that date programs for eight agencies were still outstanding, including that of the Human Rights and Equal Opportunity Commission (although this and four of the other programs had been received by 30 September 1989).

In May 1987 the Treasurer announced plans for the restructuring of the Public Service Board. The Administrative Arrangements Act 1987 assented to on 18 September, abolished the Board and created the Office of the Public Service Commissioner. This Act amended the Public Service Act 1922 by removing the definition of the Board and inserting the definition of Commissioner (i.e. the Public Service Commissioner), and by providing that references to the Board were references to the Commissioner. Some of the Board's former functions were devolved or transferred to other Departments including the Department of Industrial Relations and the Department of Finance. The Public Service Commissioner retained responsibility for the guiding and monitoring of EEO programs, although the aim was to devolve more responsibility to Department Heads. The Department
of Finance is now responsible for the production of the statistical data necessary for the monitoring of EEO programs.9


Despite the passing of the Public Service Reform Act 1984, and of regulations in June 1986 (Statutory Rules No.130-135, 1986) which brought other Commonwealth departments and authorities within the scope of section 22B of the Public Service Act, a number of Commonwealth authorities including some major statutory authorities which had no statutory relationship with the Public Service Board were still not covered by legislation requiring EEO programs. On 19 March 1987 the Equal Employment Opportunity (Commonwealth Authorities) Bill 1987 was introduced in the House of Representatives. It was read a third time in this House on 26 March 1987 and in the Senate on 5 May 1987. It received assent on 18 May 1987.

The Act widened the requirement for EEO programs to those Commonwealth authorities, including statutory authorities, employing 40 or more employees in Australia, not covered by the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 or the Public Service Act 1922.

The Act follows sub-section 22B(2) of the Public Service Act in providing for the contents of the EEO program. Minimum requirements for a program include informing employees of the program and results of monitoring and evaluation; appointing an officer of sufficient authority and status to be responsible for development and implementation of the program; consulting relevant trade unions and employees, particularly women and persons in designated groups; collecting and recording relevant statistics and information on employment by the authority, including numbers and types of jobs or classification, of male and female employees and persons in designated groups; identifying discriminatory policies and practices or patterns of lack of equality of opportunity in employment; setting objectives for the program and quantitative and other indicators against which the effectiveness of the program is to be assessed; and monitoring and evaluating the implementation of the program. No action is to be incompatible with the principle that employment matters should be dealt with on the basis of merit.

Major authorities covered by this legislation included Telecom (approximately 91000 employees in 1987), the Australian Postal Commission (approximately 37 300 employees in 1987), and the Commonwealth Banking Corporation (approximately 36100 employees in 1987). Four primary industry authorities were exempted from the legislation (the Australian Dairy Corporation, the Australian Meat and Livestock Corporation, the Australian Wheat Board and the Australian Wool Corporation) as it was planned to amend their establishing legislation to provide for EEO programs. This has occurred in the case of three of these Authorities through the Wheat Marketing Amendment (No 2) Act 1987 (s 45AA and 45 AB), the Wool Marketing Act 1987 (s 41 and s 42) and the Australian Meat and Live-stock Industry
Legislation Amendment Act 1987 (s 33 and s 33A). The Australian Dairy Corporation, with a small number of employees has also set in place an EEO program.

Under the Act, authorities have the option of reporting to their Ministers, or to the Public Service Commission. All have chosen to report to their own Minister and each now issues its own EEO report. The Department of Industrial Relations has overall responsibility for administering both the Equal Employment Opportunity (Commonwealth Authorities) Act and the Affirmative Action (Equal Employment Opportunity for Women) Act.

SOUTH AUSTRALIA: SEX DISCRIMINATION ACT, 1975, EQUAL OPPORTUNITY ACT, 1984

South Australia was the first Australian State to introduce sex discrimination legislation.

In 1973 a Sex Discrimination Bill was introduced into the South Australian Parliament as a Private Member's Bill by Dr David Tonkin. A Select Committee report on the proposed Bill led to the reintroduction in June 1975 of sex discrimination legislation. The Bill was regarded as a positive step towards achieving the aims of International Women's Year (1975). Its purpose was 'to render unlawful certain kinds of discrimination on the grounds of sex or marital status; to provide effective remedies against such discrimination and promote equality of opportunity between men and women generally; and to deal with other related matters'. The legislation also had an educative purpose. The Government hoped that it would create a climate in which public opinion would be 'mobilised against this form of discrimination'. The 1975 Bill extended the terms of the original Bill in provision for machinery for conciliation or the imposition of penalties. Many of the provisions were modelled on the United Kingdom's Sex Discrimination Act of 1975.

The South Australian Sex Discrimination Act was assented to on 4 December 1975 and took full effect from 12 August 1976. The Act prohibited both direct and indirect discrimination on the ground of sex or marital status. Indirect discrimination was defined as discrimination based on a characteristic or presumed characteristic appertaining generally to persons of a group (or marital status). Discrimination was defined as less favourable treatment than that in identical or similar circumstances to the treatment which would be accorded to a person of the opposite sex or different marital status.

The Act made discrimination on the basis of sex or marital status unlawful in employment, education, the provision of goods and services (including banking,
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credit and insurance), access to public places, accommodation and advertising. Discrimination in employment included work done by commission agents and contract workers, in relation to a partnership, and in the membership and rules of a trade union or employers' organisation. Similarly an employment agency or a qualifying body (i.e. an authority or body empowered to confer an authorisation or qualification that is needed for, or facilitates, the practice of a profession or trade) might not discriminate on these grounds.

The Act established a Commissioner for Equal Opportunity and a Sex Discrimination Board. The Commissioner was appointed subject to the Public Service Act, 1967. Duties of the Commissioner were to investigate and conciliate complaints of unlawful discrimination, to initiate investigations and review all South Australian legislation to identify any discrimination. The Commissioner had to present an annual report and in it make any recommendations for the elimination or modification of discriminatory legislative provisions.

The Sex Discrimination Board was chaired by a judge or lawyer of at least seven years standing, and had two other members. These appointments were not subject to the Public Service Act 1967, but the appointment of Registrar to the Board was a public service position. The main functions of the Board were to hear and determine complaints, initiate inquiries and to grant exemptions from the Act. After hearing evidence the Board could dismiss the complaint or, if satisfied that there had been contravention of a provision of the Act, it could make an order requiring that the contravention cease and that future contravention be eliminated. It could order the payment of compensation to the complainant. Penalties not exceeding $2000 could be imposed for non-compliance with an order of the Board.

On 23 August 1984 the South Australian Attorney-General introduced a new Equal Opportunity Bill in the Legislative Council. The Bill resulted from the report of a working party on anti-discrimination legislation which recommended in December 1983 that there should be one Act, one agency to administer the legislation and one tribunal to deal with disputed complaints in all areas. The Equal Opportunity Act, 1984 passed through the Parliament on 7 December 1984, after the resolving of a deadlock between the Houses over the definition of sexual harassment. It was assented to on 20 December 1984 and came into force on 1 March 1986.


- promoting equality of opportunity between the citizens of South Australia;
- preventing certain kinds of discrimination based on sex, sexuality, marital-status, pregnancy, race or physical impairment; and
facilitating the participation of citizens in the economic and social life of the community.

Part III of the Act concerns the prohibition of discrimination on the ground of sex, sexuality, marital status or pregnancy in the areas of employment (including agents and contract workers), partnerships (the ground of sexuality is exempted), associations with both male and female members, qualifying bodies, and education or in relation to land, goods, services, accommodation, or superannuation. The provision relating to superannuation (Division VI of Part III) has not yet been proclaimed and will probably now wait for the Commonwealth's superannuation amendments to be passed.

Part VI of the Act concerns 'other unlawful acts' and includes the prohibition of sexual harassment in the areas of employment (including commission agents and contract workers), education, the provision of goods and services, and accommodation. Section 87 includes the provision that employers, education authorities and the providers of goods and services have a duty to ensure that none of their employees subject other employees, students, customers etc. to sexual harassment. Sexual harassment is defined as behaviour which causes a person to feel offended, humiliated or intimidated in circumstances in which it is reasonable for that person to feel offended, humiliated or intimidated, when the behaviour involves the subjecting of another person to an unsolicited and intentional act of physical intimacy, demanding or requesting (directly or by implication) sexual favours from the other person or making a remark (on more than one occasion) pertaining to the other person, being a remark that has sexual connotations.

The Act establishes a Commissioner for Equal Opportunity and an Equal Opportunity Tribunal. The Commissioner is appointed for five years and may be reappointed. Duties of the Commissioner are to foster and encourage informed and unprejudiced attitudes in the community with a view to eliminating discrimination on the ground of sex, sexuality, marital status, pregnancy, race or physical impairment; to institute, promote or assist in research, collection of data and the dissemination of information relating to such discrimination; to make recommendations to the Minister and to furnish advice; and to make annual reports to the Minister on the operation of the Act. Other duties of the Commissioner and officers who assist the Commissioner are to investigate complaints (which have been lodged in writing) and to attempt to resolve these by conciliation. The Commissioner may decline to take action or proceed if of the opinion that a complaint is frivolous, vexatious, misconceived or lacking in substance. To assist in the investigation of a complaint, the Commissioner may require books, papers or documents from the person alleged to have contravened the Act, and failure to comply carries a maximum penalty of up to $2000. Section 28a of the Acts Interpretation Act provides that from 1 August 1990 division-type fines and penalties will apply in South Australia so that these may be amended or increased by one Act. The Statute Law Revision Act 1990 amended sections of the Equal Opportunity Act dealing with fines and penalties so that, for example, 'a penalty not exceeding $2000' is replaced by 'Penalty: Division 7 fine'.
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The Equal Opportunity Tribunal consists of a Presiding Officer who is a judge or magistrate, not more than two Deputy Presiding Officers who are either judges, magistrates or legal practitioners of not less than seven years standing, and a panel of not more than 12 persons nominated by the Minister to be available for selection to sit at hearings. Members of the Tribunal are appointed for three years and are eligible for reappointment.

After hearing evidence and representations concerning a complaint, the Tribunal may order the payment of damages by the respondent to the complainant, may order the respondent to refrain from further contravention of the Act or may order the respondent to perform any acts to redress the loss or damage suffered by the complainant, or may dismiss the complaint. Appeals may be made to the Supreme Court against decisions of the Tribunal.

In 1989 the Act was amended by the Equal Opportunity Act Amendment Act, 1989 to extend prohibition of discrimination to the ground of intellectual impairment, and to alter the language of the Act to render it gender neutral. Other amendments relating to discrimination on the ground of age have been passed but not proclaimed.


NEW SOUTH WALES: ANTI-DISCRIMINATION ACT, 1977

In 1976 an Anti-Discrimination Bill listing nine grounds of unlawful discrimination was introduced by the NSW Government. These grounds were race, sex, marital status, age, religious conviction or political conviction, physical handicap or condition, mental disability, and homosexuality. The Bill was substantially amended by the Legislative Council which deleted all grounds except those of race, sex and marital status and made other amendments. The grounds deleted, and that of membership or non-membership of a trade union, were matters set for research by the Anti-Discrimination Board, established under the Act.

The Anti-Discrimination Act, 1977 was assented to on 28 April 1977 and took full effect from 1 June 1977. Its stated purpose is 'to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons'.

Discrimination on the ground of sex or marital status is defined as less favourable treatment than given, or would be given, in the same or similar circumstances to a person of the opposite sex or different marital status. As in the South Australian
Act both direct and indirect discrimination are unlawful on the ground of sex or marital status in certain areas.

The Act prohibits discrimination on the ground of sex or marital status in employment and in applying for employment. It also prohibits discrimination against commission agents and contract workers, discrimination by trade unions, qualifying bodies and employment agencies, discrimination in according access to places where liquor is sold, and discrimination in the provision of goods, services and accommodation. Discrimination on the ground of marital status is not proscribed in the matter of access to places where liquor is sold or in the provision of goods.

The Act was amended in 1980 to extend its provisions to public employment. The Anti-Discrimination (Amendment) Act, 1980 was assented to on 28 April 1980. Its purpose was to eliminate discrimination in public employment on the ground of race, sex and marital status, and to promote equal opportunity for women and members of racial minorities in State public employment (including the teaching service, police force and State authorities).

In 1981 the Act was again amended to make discrimination on the ground of physical impairment also unlawful in certain circumstances, and for certain other purposes. The Anti-Discrimination (Amendment) Act, 1981 extends the provisions of the Act to public education (except for single sex schools), discrimination by registered clubs, and discrimination in partnerships.

Amendments in 1982 to the Act transferred to the President of the Anti-Discrimination Board the functions formerly allocated to the Counsellor for Equal Opportunity, and made discrimination on the ground of intellectual impairment or homosexuality unlawful in certain circumstances. In 1989 vilification on the ground of race also became unlawful.

The Anti-Discrimination (Amendment) Act, 1984 provided that inquiries by the Equal Opportunity Tribunal may be held in private if the Tribunal (by its own motion or an application of a party to the inquiry) considers this appropriate.

The 1977 Act had established a Counsellor for Equal Opportunity and an Anti-Discrimination Board. The 1981 amendments established an Equal Opportunity Tribunal. Duties of the Counsellor, which became the duties of the President of the Anti-Discrimination Board, are to investigate complaints of unlawful discrimination and to endeavour to resolve these by conciliation. If the President is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance 'he' may decline to entertain the complaint but must advise the complainant of the reason for this and the complainant's rights. Where the President fails to resolve a complaint he may refer it to the Equal Opportunity Tribunal.

The Anti-Discrimination (Amendment) Act, 1981 established the Equal Opportunity Tribunal to be composed of a number of part-time members, at least one of whom
is to be a judge or person qualified for appointment as a judge. When sitting, the Tribunal is made up of three members, the senior member being the judicial member, and two non-judicial members. The Tribunal's main function is to investigate complaints referred to it by the President of the Anti-Discrimination Board or the Minister. The Tribunal may hold a single inquiry into several complaints arising out of the same or substantially the same circumstances, and may join a person as a party to an inquiry. It may dismiss complaints if judged to be frivolous, vexatious, misconceived or lacking in substance. If the Tribunal finds a complaint substantiated it may order the payment of damages not exceeding $40,000 to the complainant, may order the respondent to cease the unlawful conduct or order the respondent to make redress for loss or damage suffered by the complainant. The Act provides for a right of appeal against a decision or order of the Tribunal.

The Anti-Discrimination Board consists of the President and two part-time members who may be appointed (under the 1982 Amendments) for a period not exceeding seven years in the case of a full-time member (the President) and three years in the case of a part-time member, and are eligible for reappointment. General functions of the Board are to:

(a) carry out investigations, research and inquiries relating to discrimination, in particular on the grounds of age, religious or political conviction, mental disability, and membership or non-membership of a trade union;

(b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights;

(c) arrange and co-ordinate consultations, discussions, seminars and conferences;

(d) review, from time to time, the laws of the State;

(e) consult with governmental, business, industrial and community groups and organisations in order to ascertain means of improving services and conditions affecting minority groups and other groups which are the subject of discrimination and inequality;

(f) hold public inquiries; and

(g) develop human rights programs and policies.

The Anti-Discrimination (Amendment) Act, 1985 provides for a closer working relationship between State and Commonwealth authorities in the 'promotion of the observance of human rights'. Arrangements may be made between the State and Commonwealth Ministers to delegate certain functions under the Sex Discrimination
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Act 1984 (Cth) and other anti-discrimination or human rights Acts to the President of the Anti-Discrimination Board, to the Board or to an officer of the Board.

Equal employment opportunity in the State public service is provided for in the Anti-Discrimination (Amendment) Act, 1980. Public service departments and authorities are required to prepare and implement equal opportunity management plans to achieve the objects of equal opportunity. (The 1984 amendments provided that these plans include provision for physically handicapped persons.) The position of Director of Equal Opportunity in Public Employment was established (1980). Functions of the Director include advising and assisting authorities in relation to their management plans, evaluating the effectiveness of these plans and reporting and making recommendations to the Minister on the operation of the plans and on the objective of equal opportunity. The Miscellaneous Acts (Public Sector Executives Employment) Amendment Act 1989 made changes to the conditions of employment of the Director in line with the provisions of the Public Sector Management (Executives) Amendment Act 1989.

VICTORIA: EQUAL OPPORTUNITY ACT 1977,
EQUAL OPPORTUNITY ACT 1984

In 1975, International Women's Year, the Victorian Government established a Committee on the Status of Women which reported to the Premier in August 1976. The Committee's recommendations included the introduction of legislation to combat sex discrimination. The Equal Opportunity Act was passed by Parliament on 24 May 1977 and became fully operative by 3 April 1978. Its stated purpose was 'to render unlawful certain kinds of discrimination on the ground of sex or marital status, to promote equality of opportunity between men and women, to make consequential amendments to certain Acts and for other purposes'.

Discrimination on the ground of sex or marital status is defined again as less favourable treatment than that accorded to a person of the other sex or different marital status. The Act covered such discrimination in employment and the offer of employment, discrimination against commission agents and contract workers, discrimination in partnerships and in professional and other organisations, discrimination by qualifying bodies, employment agencies and educational authorities, and discrimination in the provision of goods, services, or accommodation. The Act established a Commissioner for Equal Opportunity and an Equal Opportunity Board and provided for the investigation and resolution of complaints.

The Act was repealed and replaced by the Equal Opportunity Act 1984 which was assented to on 22 May 1984 and came into operation on 1 August 1984. The new
Act also repealed and incorporated the provisions of the *Equal Opportunity (Discrimination Against Disabled Persons) Act 1982*.

The *Equal Opportunity Act 1984* widened the grounds of unlawful discrimination to discrimination on the grounds of status and private life. For the purposes of the Act 'status' is defined as the sex, the marital status, the race, or the impairment of that person or the status or condition of being a parent, childless or a de facto spouse. 'Private life' is defined as

(a) the holding or not holding of any lawful religious or political belief or view by the person; or

(b) engaging or refusing to engage in any lawful religious or political activities by the person.

The Act outlaws sexual harassment in the areas of employment, education and in the provision of goods and services and accommodation.

An objective of the Act is 'to facilitate the administration of the Act by strengthening the investigation, conciliation and enforcement provisions'.

Amendments made by the *Equal Opportunity (Amendment) Act 1985* included provision for the appointment of part-time members of the Board, for preliminary conferences, for the removal of gender specific language in the Act and for the transfer to the Commissioner of some functions formerly allocated to the Board.

The Act (as amended) makes provision for a Commissioner for Equal Opportunity and an Equal Opportunity Board. The Commissioner is appointed under the *Public Service Act 1974*. The Equal Opportunity Board consists of a President (the 1985 amendment replacing the former 'chairman') and not less than two other members, appointed by the Governor in Council and not, by reason of this office, subject to the provisions of the *Public Service Act 1974*. The Registrar of the Board and other staff are public servants.

It is the Commissioner's function to investigate complaints or matters referred by the Board, and to attempt to resolve these by negotiation. The Commissioner may dismiss complaints considered to be frivolous, vexatious, misconceived or lacking in substance. Where this attempt at negotiation is unsuccessful, the Commissioner may refer the matter to the Board. The *Equal Opportunity (Amendment) Act 1987* empowered the Commissioner for Equal Opportunity also to initiate investigations in certain cases. The 1985 amendments included provision for the making of an interim order by the President of the Board to prevent a party from acting in a manner prejudicial to negotiations or to the conciliation procedure. Provision is also now made for the holding of preliminary conferences.

If the Board is satisfied that a person has contravened a provision of the Act it may make an order requiring that the person refrain from contravention of the Act, or
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requiring redress. Failure to obey an order is an offence and a penalty not exceeding 20 penalty units ($2000), and five penalty units ($500) for each day of continuing non-observance, may be imposed. The penalty for giving false or misleading information is also a maximum of 20 penalty units.

If the Board, after hearing a complaint, considers that it is frivolous, vexatious or totally lacking in substance or that the respondent has behaved unreasonably, it may order the person who made the complaint to pay the costs incurred by the other person.

Hearings of the Board are to be held in public but the Board may direct that a hearing or part of a hearing be held in private and may order that evidence, documents or information must not be published except as specified by the Board.

Provision is made that for questions of law arising in proceedings before the Board, the Board may seek the opinion of the Supreme Court. Any party to proceedings before the Board may appeal to the Supreme Court against an order of the Board on a question of law only.

Educational and other duties of the Commissioner include the dissemination of information to promote equality of opportunity between men and women and the elimination of discrimination on the ground of sex or marital status, the review of legislation to identify discriminatory provisions, relevant research and reports to the Minister.

In January 1989, the Law Reform Commission of Victoria was asked by the Attorney-General to conduct a major review of the operation of the Act and to advise on whether changes should be made to the scope of the Act and its administration. In May 1989 the Commission published a Discussion Paper on its review and invited comments on a number of proposals for reform of the Act. Among the proposals were those to extend the Act to prohibit discrimination on the ground of sexuality or on imputed grounds (i.e. of a presumed characteristic). At present a complainant of discrimination on the ground of sex or marital status has to have the characteristic which is the ground for discrimination, whereas the discrimination may have occurred because of a mistaken presumption. Another proposal was to extend the Act to prohibit unconsciously motivated discrimination. A clearer distinction between administrative and judicial functions was also advocated, with the Equal Opportunity Board becoming a specialist judicial body named the 'Equal Opportunity Tribunal'. In March 1990 the Law Reform Commission took the unusual step of issuing a second discussion paper which developed its proposals in more detail following further research and comment received on the first discussion paper. The second paper presents a draft Equal Opportunity Bill in plain English. The Draft Bill incorporates the Commission's proposed changes to the Act, including the prohibition of discrimination on the new grounds of age, sexuality, irrelevant criminal record, social origin, pregnancy, personal association and presumed characteristics. Comment is invited from the public on the second discussion paper, and the proposals are being considered by the Attorney-General's Department.
The Public Service (Amendment) Act 1984 provides for equal employment opportunity programs in State government employment in Victoria.

WESTERN AUSTRALIA: EQUAL OPPORTUNITY ACT 1984

On 20 September 1984 the Western Australian Equal Opportunity Bill was introduced into the Legislative Assembly. The Bill was sent back to the Legislative Assembly from the Council on 6 November 1984 with some minor amendments which were agreed to by the Assembly. The Act was assented to on 7 December 1984 and was proclaimed and entered into force on 8 July 1985.

Under the Equal Opportunity Act, discrimination - direct or indirect - is unlawful on the ground of sex, marital status, pregnancy, race and religious or political conviction in the areas of employment, education, the provision of goods, services and facilities, accommodation and the activities of clubs. (The ground of impairment was added by the Equal Opportunity Amendment Act 1988). Sexual harassment is unlawful in employment and education. It is also unlawful to discriminate in advertisements and to victimise a complainant. During the 1989 election campaign, an undertaking was made by the Labor Government to amend the Act to protect people from discrimination based on their family commitments and responsibilities. A paper addressing this ground is being prepared by the Office of the Commissioner for Equal Opportunity.

The Act establishes a Commissioner for Equal Opportunity and an Equal Opportunity Tribunal. The main responsibilities of the Commissioner for Equal Opportunity are the investigation and conciliation of complaints, community education and the review of legislation to identify discriminatory provisions. The Commissioner may direct parties to attend a compulsory conference. The Tribunal consists of a part-time President who must be a legal practitioner of at least seven years standing, and two other members. The Equal Opportunity Amendment Act 1988 provided for more flexibility in the composition of the Tribunal by providing for the appointment of two deputy presidents enabled to perform the functions of the President, and by provision for an enlarged pool of deputy members.

The Tribunal holds inquiries into complaints referred by the Commissioner or the Minister and attempts to resolve these by conciliation or by order where possible. Where a complaint is substantiated, the Tribunal may order a respondent to pay the complainant damages not exceeding $40 000. The Tribunal may dismiss a complaint if satisfied that it is frivolous, vexatious, misconceived or lacking in substance or should be dismissed for any other reason. Provision is made for appeal to the Supreme Court on a question of law in a decision or order of the Tribunal.

Equal employment opportunity in State Government employment is an important objective of the Act. A Director of Equal Opportunity in Public Employment has
been appointed and each State Government authority is required to prepare and implement equal employment opportunity management plans. The provisions of equal employment opportunity in public employment are based on the New South Wales legislation.

A report of a review of discrimination in public sector blue collar employment, the first such study in Australia, was published in 1988. The review found low representation of women and Aboriginals, and lack of development and advancement for Aboriginals and those of non-English speaking backgrounds.

OTHER STATES

The Queensland, Tasmanian and Northern Territory Governments have not yet passed sex discrimination legislation. Complaints in Queensland, Tasmania and Northern Territory are at present made under the federal legislation and directed to regional offices of the Human Rights and Equal Opportunity Commission in Brisbane, Hobart and Darwin. State and Territory employees, including teachers, police and State public servants in Queensland, Tasmania and the Northern Territory are not covered by the Commonwealth legislation.

The Northern Territory Public Service Act has a requirement of non-discrimination and there is an Assistant Commissioner for Equal Employment Opportunity in the Northern Territory Public Service. The Leader of the Opposition in the Northern Territory has promised to legislate to cover the 6,800 women employees of the Northern Territory Government should Labor win office in the Territory.14

With the election in 1989 of a Labor Government in Queensland, plans are under way for State sex discrimination and equal opportunity legislation. According to the Queensland Attorney-General, Dean Wells, this should be introduced by the end of the year.15 The Queensland Women's Information Service, a Commonwealth Government service, is to close on 30 November 1990 and its functions will be, taken over by the new women's policy unit within the Premiers Department. This unit will be responsible for monitoring government programs, advising on policy, consulting women in the community and providing information.

In 1978 the Tasmanian Minister for Education, Recreation and the Arts, Mr Holgate, introduced an anti-discrimination Bill

for the prevention of unjustifiable discrimination on the grounds of sex, marital status, ethnic origin, or physical handicap; and for the making of inquiry into discrimination on the grounds of religious or political belief.
This Bill lapsed after a Senate Select Committee of the Legislative Council concluded that the legislation was unnecessary.

As in Queensland, the change of Government in Tasmania in 1989 prompted new plans for anti-discrimination legislation on a number of grounds including sex, marital status, pregnancy, parenthood and sexual orientation. The areas to be covered (with standard exemptions) are employment or occupation; education; access to places and facilities; land, housing and other accommodation; provision of goods, services and facilities; and clubs. Legislation will be generally in line with the Commonwealth legislation and should be introduced in the Autumn Sitting of 1991. It will be enforceable to the same extent as provisions of the Commonwealth legislation except that it will extend also to the ground of parenthood, sexual orientation and impairment. Non-enforceable conciliatory grounds will match those covered by the Human Rights and Equal Opportunity Commission, except for the omission of the ground of criminal record. An Office of the Status of Women has already been set up to advise the Premier and to provide consultative and information services.

An early amendment to the Tasmanian State Service Act is also planned to provide for equal opportunity in the State public service. Further legislation may follow to cover State agencies and local government.

An interesting development in both Tasmania and Queensland could be the reversal of the reciprocal arrangements now applying in the other States in administering both the Commonwealth and State legislation. It is likely that with Human Rights and Equal Opportunity offices already operating in both Tasmania and Queensland, these States may come to some arrangement for them to continue and to take on also complaints made under the State legislation.

The *Sex Discrimination Act 1984* (Cth) covers the Australian Capital Territory. The ACT Ordinances exempted from provisions of the *Sex Discrimination Act 1984* (Cth) have been progressively reviewed. Those exempted still by the latest regulations until 31 July 1991 are listed at Appendix 3. The move of the Commission's headquarters from Canberra to Sydney has meant that residents of the ACT must now take complaints to the Sydney office.

**EFFECTIVENESS OF THE LEGISLATION**

**Operation of the Acts**

Reviews of the legislation, assessments of its effectiveness in different areas and recommendations for future amendments or action are undertaken by the Human Rights and Equal Opportunity Commission, and by the State Commissioners for Equal Opportunity and by the Anti-Discrimination Board. Recent research by these
bodies has included topics such as superannuation and insurance, possible extension of the grounds of discrimination, and reviews of employment exemptions.

Inevitably there have been challenges to the legislation and criticisms of the findings of the Board or Commissioners from various sources. Although most complaints are dealt with by conciliation and conference processes, some cases have proceeded to the courts for judgement and in a number of cases, the court of appeal has overturned the findings of the Equal Opportunity Board or Tribunal. At the outset also there was academic criticism that the then Human Rights Commission failed to address key issues of the Sex Discrimination legislation in some early cases before it. As case law has developed, aspects of the legislation have been seen as deficient in some areas in terms of achievement of the stated objectives.

The Human Rights and Equal Opportunity Commission in the Annual Report 1988-89 commented on difficulties encountered in administering its legislation. Unlike its state counterparts, the Human Rights and Equal Opportunity Commission cannot enforce its decisions without recourse to the Federal Court:

The Commission has considered whether the existing scheme of hearings in relation to sex and race matters is satisfactory from both the Commission's and the parties' points of view. At present the Commission hears and determines complaints but its determinations are not enforceable without a further hearing in the Federal Court. By way of comparison, the Privacy Act requires only one hearing to provide enforceable rights to a complainant who proves breach of an Information Privacy Principle by a Federal agency.

On this question of enforcement, the current President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, recently commented:

I do not wish to understate the significance of the Sex Discrimination Act and the Racial Discrimination Act in translating international law on human rights into rights enforceable in the Australian legal system. But there are substantial problems in enforcement...

The Commission may make determinations as to whether unlawful conduct has occurred, and as to what if any remedies should be given. The process has many of the indicia of judicial power. However, the determinations of the Commission are stated not to be binding or conclusive between the parties.

In this the Commission contrasts with the NSW Equal Opportunity Tribunal and its equivalents under other State anti-discrimination legislation, which exercise judicial power in the full sense. Unlike the State bodies, the Commission is constrained by the Boilermakers case.
The Commission's hearings are considerably less formal, lengthy and expensive than court proceedings. Nonetheless, a complaint which goes to hearing normally required far more of the Commission's resources, and takes a longer period, than the more typical complaint settled in conciliation. It is frustrating for the Commission, therefore, and no doubt for complainants, to know that a respondent against whom a determination is made is under no direct legal duty to comply.

Enforcement proceedings in the Federal Court are provided for. The Federal Court has held however that these are not strictly proceedings for enforcement of the Commission's order. The Federal Court is required to satisfy itself that unlawful conduct has occurred, and determine for itself what order is appropriate, rather than relying on the determinations of the Commission or on evidence given to the Commission.

It must be possible to arrive at a simpler and more workable procedure that this for determining cases.\textsuperscript{13}

The practical effect of this division of powers was apparent in a 1987 sex harassment case in Queensland which attracted media attention. The Human Rights and Equal Opportunity Commission had awarded damages to the complainant, who then applied to the Federal Court to enforce payment. The Federal Court judge, Justice Spender, commented that the Commission's decision was 'non-binding' and constituted a 'moral force only'. The defence raised a challenge to the power of the Commonwealth to enforce the Act in Queensland through the use of the foreign-affairs powers of the Constitution. Although in the end the original Commission decision was upheld, the complainant has still received no damages payment.\textsuperscript{19} The protracted nature of the case and publicity it received, together with the apparent lack of effective compensation are seen as deterrents to other complainants.

Another Human Rights and Equal Opportunity case raised questions of the separation of judicial and conciliatory functions, as well as those of adequate compensation and interpretation of the legislation. This 1988 sex harassment case also received widespread publicity when the then President of the Human Rights and Equal Opportunity Commission, Justice Einfeld, found that women employees of a Sydney doctor had been sexually harassed by their employer, but decided not to award damages, commenting that such behaviour was within the normal experiences of women. The decision was attacked by women's organisations including the National Women's Consultative Council and Women's Electoral Lobby, by Justice Elizabeth Evatt of the Australian Law Reform Commission and by State Equal Opportunity Commissioners and the head of the NSW Anti-Discrimination Board. Concern was expressed that the decision and the publicity given to these cases would discourage future harassment complaints, and in fact a case scheduled to be heard by Justice Einfeld at Whyalla, South Australia, in September 1988 shortly after the Sydney decision, was withdrawn. In turn Justice Einfeld reportedly
expressed dissatisfaction with the role of the NSW Anti-Discrimination Board which appeared, he said, 'not as a conciliator or honest broker, but as an advocate, even aggressive partisan'.

The question of possible conflict in the conciliation and judicial roles is relevant for the Federal and State anti-discrimination bodies. This question has arisen when conciliation attempts have failed and the Commissioner or Commission then plays a part in presenting the case before the Tribunal or Supreme Court in the case of an appeal, or before the Federal Court. In considering the question of the need to separate the investigation and adjudication functions, the Law Reform Commission of Victoria proposed, for Victoria, a clearer distinction between administrative and judicial functions, and that the Equal Opportunity Board should be renamed the Equal Opportunity Tribunal to better describe its functions.

A case in Victoria raised fundamental questions on anti-discrimination legislation when the Victorian Supreme Court in 1988 overturned a decision of the Equal Opportunity Board of Victoria. The Board had found that the then Victorian Health Department (later Commission) had discriminated against a doctor because of his race. However, Mr Justice Fullagar ruled in the Supreme Court that to be unlawful, the discrimination had to be a conscious act. The High Court refused leave to appeal against this decision because it said the case involved no general principle. One legal commentator, Professor Tony Blackshield, pointed out that it could be very difficult to prove that racist and sexist acts were conscious acts. The Law Reform Commission of Victoria has proposed that the Equal Opportunity Act should be extended to prohibit unconsciously motivated discrimination. Its Draft Equal Opportunity Bill includes the provision that for unlawful discrimination to take place, it is not necessary that 'the person be aware that the characteristic is a basis for his or her treatment of the other person'. However, if this is a necessary amendment to make the Victorian Equal Opportunity Act effective then other State and Federal legislation may need similar amendments.

Another cause for concern in this case was the awarding of legal costs of the Supreme Court case ($100,000) against the individual who was in that position simply because he had been a successful complainant to the Equal Opportunity Board. This was seen as a deterrent to individuals who could not match the financial resources of a government department or large organisation.

Exemptions

The Commonwealth and State sex discrimination and equal opportunity Acts provide for many exceptions to, and exemptions from, their provisions. Inevitably some of these exceptions reduce the overall effectiveness of the legislation in combating discrimination. Others can be regarded as common-sense precautions against unreasonable expectations.
Employment exemptions

In the area of employment, the Commonwealth Sex Discrimination Act 1984 provides a list of general exemptions where it is a genuine occupational qualification to be a person of a particular sex. These apply if:

(a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of one sex;

(b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition, is required to be performed by a person of a particular sex;

(c) the duties of the position need to be performed by a person of a particular sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;

(d) the duties of the position include the conduct of searches of the clothing and bodies of persons of one sex;

(e) the occupant of the position is required to enter a lavatory ordinarily used by members of one sex while the lavatory is in use by members of that sex;

(f) the occupant of the position is required to live on premises provided by the employer or principal and -

   (i) the premises are not equipped with separate sleeping accommodation and sanitary facilities for members of each sex;
   (ii) the premises are already occupied by a person, or persons of one sex; and
   (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation and sanitary facilities for members of each sex;

(g) the occupant of the position is required to enter areas ordinarily used only by persons of one sex while those persons are in a state of undress; or

(h) the position is declared, by regulations made for the purpose, to be a position in relation to which it is a
genuine occupational qualification to be a person of a particular sex.

These general exemptions for employment appear also in the State Acts of New South Wales and Western Australia and, although expressed differently, in the Victorian *Equal Opportunity Act 1984*. The South Australian *Equal Opportunity Act* also exempts discrimination on the ground of sex in relation to employment 'for which it is a genuine occupational requirement that a person be of a particular sex'. The Commonwealth and Western Australian Acts provide specific exemptions for employment involving the residential care of children and where the position is one of two to be held by a married couple.

Exemption for employment within a private household is provided in all five Acts. The New South Wales Act provides exemption from the provisions covering discrimination in employment where the number of persons employed by the employer (excluding those within the private household) does not exceed five. The Victorian Act provides a similar exemption where the number of employees does not exceed three. The South Australian *Equal Opportunity Act, 1984* removed the exemption given to employers of fewer than five employees which its *Sex Discrimination Act, 1975* had allowed. The Commonwealth Act provides some coverage for employees in small businesses in Victoria and New South Wales and in States which have no anti-discrimination legislation. The provisions of the Commonwealth Act do not apply to employees of a State or State instrumentality.

In 1985 the Labor Council of New South Wales proposed amendments to the *Anti-Discrimination Act, 1977* (NSW) which would delete references to discrimination against applicants and employees, commission agents, contract workers and employment agencies. The Council proposed the insertion of a new part, titled 'Discrimination in Work', into the Industrial Arbitration Act, thus transferring the jurisdiction of responsibility for discrimination in employment. This proposal aroused opposition from many community groups and was not taken up by the NSW Government.

In June 1988, the NSW Government announced an inquiry into Industrial Relations in NSW. The terms of reference included equal employment opportunity and anti-discrimination laws. Professor John Niland was commissioned to prepare a Green Paper and this appeared in March 1989 with the title *Transforming Industrial Relations in NSW*. The Niland Report recommended that discrimination in employment should continue to be dealt with by both the Anti-Discrimination Board/Equal Opportunity Tribunal and the Industrial Relations Commission.

The *Sex Discrimination Act 1984* (Cth) and the NSW and Western Australian Acts exempted from their provisions any action in compliance with an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment. Under the Victorian Act an action in compliance with a
provision of an instrument made or approved by or under any other Act is not unlawful.

Of major concern were legislative and award restrictions to women's employment. The Australian Council of Trade Union's (ACTU) 1981 survey, *Federal Award Provisions which Differentiate on the Basis of Sex*, identified approximately 300 Federal awards in force at 1 January 1980, which contained provisions the effects of which could be discriminatory to women. The survey demonstrated that a wide range of provisions in awards required review. Women were for example, subject to restrictions concerning the hours they worked, the maximum weights which they may lift, machines they may operate and jobs that they may perform. Some awards were drafted throughout on the presumption that only men would be employed in an industry, with the result that women were not entitled to some benefits under the award (such as bereavement leave and transfer entitlements). A commitment was given by the Prime Minister that there would be no further extension to the exemptions after 31 July 1987 'unless there is a clear and substantial justification on health and safety grounds'.

The Office of the Status of Women and the Women's Bureau in the Department of Employment and Industrial Relations jointly funded a survey of Federal awards to identify provisions which differentiated on the basis of sex. The survey updated the ACTU's 1981 survey and identified changes made in the last five years in reviewing restrictive provisions. The ACTU and Confederation of Australian Industry (CAI) gave a commitment to aim to complete the process of removing restrictive provisions from Federal awards by the end of 1988.24

The Annual Report of the NSW Anti-Discrimination Board 1987-88 complained that the NSW Government had been tardy in acting on State industrial awards. The report urged the NSW Government to follow the Commonwealth in amending laws and industrial awards to remove discriminatory provisions:

No need exists for the laws of the State to continue to be excepted from the operation of State discrimination law. But ten years later section 54 still remains in place.

The Law Reform Commission of Victoria similarly commented about the provision in the Victorian Act. The Commission's proposed remedy is simply to abolish the provision (s 40):

The exemption in relation to conduct in accordance with industrial agreements and arrangements should be abolished.

Sex segregation in employment, and the difficulties faced by women in entering non-traditional occupations, have been major factors in keeping women's earnings at a lower rate than those of men. However there are still health and safety concerns in some industries. Much of the current research and negotiation concerns lead industries and smelters and some temporary exemptions have been granted to
these industries to apply to women employees of child bearing age. Unions have tried to address the problem by pushing for a reduction in lead levels arguing that they are dangerous to all employees, not just to women. In 1988 the Equal Opportunity Board of Victoria did not grant an application from the Australian Lead Development Association for an exemption which would have allowed excluding the employment of women who are pregnant or capable of becoming pregnant from employment involving exposure to lead levels potentially harmful to an unborn child.25

The Prime Minister announced in 1986 that the Government had decided to amend the Conciliation and Arbitration Act 1904 to require the Conciliation and Arbitration Commission when making future awards or orders to have regard to the anti-discrimination provisions of the Sex Discrimination Act. The Industrial Relations Act 1988, which replaced the Conciliation and Arbitration Act, provides that

In the performance of its functions the Commission [i.e. the Industrial Relations Commission] shall take account of the principles embodied in the Racial Discrimination Act 1975 and the Sex Discrimination Act 1984 relating to discrimination in relation to employment. (s 93).

Although obliged to take account of the principles of the Sex Discrimination Act, the Industrial Relations Commission is nevertheless empowered to make a public sector employment award or order inconsistent with the Act (under section 109 of the Sex Discrimination Act, and section 121 of the Industrial Relations Act).

Education

The Commonwealth and State Acts all have exemptions from their provisions for single sex schools, colleges and educational institutions. The Commonwealth Act also specifically provides for education or training courses for students of one sex, or mainly for students of one sex. Discrimination on the grounds of sex, marital status, pregnancy or sexual preference is not unlawful in educational institutions conducted in accordance with religious beliefs or doctrines if the discrimination is 'in good faith' and in order to avoid injury to the religious susceptibilities of the particular faith or creed. This provision (with variations in the wording) is contained in all five Acts. The New South Wales Act exempts all private educational authorities from its provisions.

Temporary exemptions

All Acts provide for the granting of temporary exemptions. The Commonwealth Act provides for the granting of exemptions by the Human Rights and Equal Opportunity Commission for a period of up to five years, with the possibility of a
further exemption for a period of up to five years. These are notified in the Commonwealth Gazette and have been granted, inter alia, for single sex primary school sport and for women only audiences before Aboriginal women dancers.

The New South Wales and Western Australian Acts also provide for the granting of temporary exemptions and further exemptions of up to five years. The Victorian and South Australian Acts provide for exemptions and further exemptions of up to three years. The State exemptions are granted by the Equal Opportunity Board of Victoria, the Equal Opportunity Tribunals of South Australia and Western Australia or by the Minister on the recommendation of the Anti-Discrimination Board in New South Wales.

Religious bodies and charities

All of the Commonwealth and State Acts provide exemptions to apply to discrimination on the ground of sex or marital status in the ordination or appointment of priests, ministers of religion or members of any religious order; their training and education; the selection or appointment of persons to perform duties or functions in connection with religious observance or practice; and to any other act or practice that conforms to the beliefs of that religion. Thus the current debate about the ordination of women priests is outside the scope of the Federal and State sex discrimination legislation.

The conferring of charitable benefits is exempted from the sex discrimination provisions of the Commonwealth and State Acts. Voluntary bodies are exempted from the provisions of the Commonwealth Act, the Western Australian Act and the NSW Act in connection with the admission of members and the providing of benefits, facilities and services to members.

Clubs

Some of the wide exemptions for clubs, contained in early State legislation, have been removed by the later Acts or amendments. Provisions of the NSW, South Australian and Western Australian Acts are now substantially the same as those of the Commonwealth Act. In July 1985 the NSW Anti-Discrimination Board issued Guidelines for Registered Clubs in an attempt to reduce the number of complaints in this area.

The Sex Discrimination Act 1984 (Cth) makes it unlawful for a club, or a committee of management or representative of a club, to discriminate against a member or an applicant for membership of the club on the ground of a person's sex, marital status or pregnancy. However, it is not unlawful to discriminate against a person on the ground of sex if membership of the club is available only to persons of the opposite sex, or if it is not practicable for a benefit to be used or enjoyed simultaneously or to the same extent by both men and women. In determining whether this latter
exemption applies, the matters to be taken into account include the purposes for which the club was established, its membership, the nature of benefits it provides, the opportunities for use and enjoyment of benefits by men and women, and other relevant circumstances. The practice of according 'associate' or auxiliary memberships to women members in a club may now be challenged.

The Victorian Act contains a different definition of 'club' from the other Acts. In the 1984 Victorian Act a club is a social, recreational sporting or community service club or a community service organisation which

- is in occupation of any Crown land; or
- is directly or indirectly in receipt of financial assistance from the State Government or a municipality.

In the Commonwealth Act

'club' means an association (whether incorporated or unincorporated) of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that -

- provides and maintains its facilities, in whole or in part, from the funds of the association; and
- sells or supplies liquor for consumption on its premises.

The Victorian Act exempts from the anti-discrimination provisions, clubs established solely for persons of a certain status or private life, clubs which exist or operate principally to prevent or reduce disadvantage to members or to preserve a minority culture. In its Second Discussion Paper on the Equal Opportunity Act Review, the Law Reform Commission of Victoria has proposed that the current approach be retained.

**Sport**

All Acts provide exemptions for competitive sporting activities in which the strength, stamina or physique of competitors is relevant. In the Commonwealth, Victorian and Western Australian Acts this exemption does not apply to coaching, administration, umpiring or refereeing, or to 'any prescribed sporting activity'. Sporting activities by children under the age of 12 years are also not exempted from the provisions of the Commonwealth and Western Australian Acts. The Law Reform Commission of Victoria has included this measure for children under 12 also in its Draft Equal Opportunity Bill.

The federal Sex Discrimination Commissioner, Ms Quentin Bryce commented recently that although discrimination against women in sport is extensive and widely
recognised, few women bring complaints under the Sex Discrimination Act to the Human Rights and Equal Opportunity Commission in this area.

Superannuation

The Commonwealth's *Sex Discrimination Act 1984* and the Western Australian *Equal Opportunity Act 1984* exempted superannuation schemes and provident funds from their provisions (s.41(1) Cth and s.34(1) WA) but both Acts then provided that:

Sub-section (1) may be repealed by a regulation, and such a regulation shall come into operation

(a) on a date specified in the regulation, being a date not earlier than 12 months after the making of the regulation; or

(b) at the expiration of the period of 2 years immediately after the commencement of this Act,

whichever is later.

At the time of introduction of the Sex Discrimination Bill 1983, the Commonwealth Government acknowledged complexities and problems in the areas of superannuation and insurance. In September 1984 the then Attorney-General, Senator Evans, requested the Human Rights Commission to report on the exemptions in the Act relating to superannuation and provident funds or schemes, and insurance. The Commission's report on superannuation, issued in October 1986, recommended the repeal of section 41(1) of the Act by regulation made under section 41(2) of the Act.

The *Sex Discrimination Amendment Bill 1990*, introduced into the House of Representatives on 12 September 1990 has this purpose. The main effect of the Bill is to remove most forms of direct discrimination on the grounds of sex and marital status in superannuation practices for new schemes. Limited exemptions apply to allow the reasonable expectations of members of existing funds to be maintained, but such discriminatory schemes would not be entitled to admit new members, and existing members would have to be given an option to obtain 'non-discriminatory superannuation benefits' unless an exemption is provided by the Human Rights and Equal Opportunity Commission under s. 44 of the Act.

Three other areas of exemption to the new superannuation conditions also apply. The first is where the discrimination is reasonable, having been based on actuarial or statistical data on which it is reasonable to rely. A second area of exemption relates to dependent superannuation benefits, where no benefit or a lesser benefit may be provided to persons without a spouse or child and may therefore perhaps be regarded as discriminatory on the grounds of marital status. The third area of
exemption is that of 'indirect discrimination'. The proposed new s. 41A(3) defines 'indirect discrimination' for the purposes of this paragraph as not only including the definitions of sub-sections 5(2) and 6(2) but also including discrimination by reason of a characteristic that appertains generally or is imputed to persons of a particular sex or marital status. This expanded definition will remove the possibility that a woman, for example, could challenge the vesting, preservation and portability arrangements of a fund by arguing that it is a characteristic of women (perhaps in regard to a particular industry) that they do not remain in employment as long as men and are therefore discriminated against by reason of their sex. The Government has stated that it believes that the terms which should apply for vesting, preservation and portability are matters which should be addressed under occupational superannuation standards by the Insurance and Superannuation Commission (ISC), and that where a fund is complying with ISC standards, complaints of discrimination should not be enabled under the Act.\textsuperscript{28}

The new provisions regarding superannuation are to commence after a period of two years from the date on which the Act receives Royal Assent.

Exemptions without the time limit apply under the NSW and Victorian Acts for superannuation schemes and provident funds, or pensions. The Law Reform Commission of Victoria in reviewing the Equal Opportunity Act proposes more limited exemptions in line with those of the Commonwealth Bill.

The South Australian \textit{Equal Opportunity Act, 1984} makes it unlawful for a superannuation scheme or provident fund to discriminate against a person on the ground of sex, sexuality, marital status or pregnancy. However the sections of the Act relating to superannuation (sections 41-44) have not yet been proclaimed. Under the South Australian Act, payment of benefits from a superannuation scheme or provident fund to surviving spouses or the payment of no benefits or less favourable benefits to surviving de facto spouses are not to be regarded as discrimination on the grounds of marital status.

The 1988-89 \textit{Annual Report} of the Commissioner for Equal Opportunity in Western Australia noted that once the Commonwealth legislation comes into effect, 'steps will be taken to progress a similarly limited exemption for superannuation in Western Australia.'

\textbf{Insurance}

All five Acts provide that it is not unlawful to discriminate on the ground of sex in the terms on which an annuity, a life assurance policy, or other insurance policy is offered or obtained, where the discrimination is based on reliable actuarial or statistical data or other relevant factors. The Human Rights and Equal Opportunity Commission has completed a review of the general exemption in relation to insurance. Its report, \textit{Insurance and the Sex Discrimination Act 1984}, recommends
retaining the exemption for differentiated insurance rates based on valid and reasonable data, but deleting the exemption based on 'any other relevant factors' (s 41 (4)). The report also recommends that insurance companies should have a duty to disclose and be accountable for the statistical data used to justify different premiums, and that the Insurance and Superannuation Commission should provide an appeal mechanism for cases where data or its interpretation is disputed. This report is now with the Attorney-General.

Accommodation

Exemptions apply in all Acts to the provision of accommodation when the person providing the accommodation (or a near relative) resides on the premises and the accommodation is provided for no more than three other persons (Commonwealth and Western Australian Acts) or for no more than six persons (New South Wales, South Australian and Victorian Acts). Exemptions also apply to the provision of accommodation by non-profit religious and charitable organisations, and in NSW to the provision of accommodation for the aged. In Victoria exemptions apply to premises let by a public statutory authority or body corporate for housing for 'lone persons or childless couples' for which financial assistance is received from the Commonwealth or Victorian Governments. Also in Victoria a person with a child may be refused accommodation if the design or location is inappropriate or unsuitable for a child. The Law Reform Commission of Victoria has omitted these exemptions from its Draft Equal Opportunity Bill.

Accommodation provided for students of one sex only is specifically exempted in the Commonwealth, Western Australian and South Australian Acts.

In 1986 publicity was given to a case in which the NSW Anti-Discrimination Board awarded damages against a man who refused to let a home unit to an unmarried couple. Following this case, Senator Harradine gave notice of motion of an amendment to the Sex Discrimination (Consequential Amendments) Bill 1986 to provide an exemption for any act based on genuinely held conscientious beliefs, but the Bill was passed without this amendment.

Combat duties

The Commonwealth Sex Discrimination Act 1984 provided that discrimination against a woman on the ground of sex was not unlawful in connection with employment, engagement or appointment in the Defence Force in a position involving the performance of combat duty, or combat-related duties. No similar exemption or reference appears in the State Acts as this is an area of Federal jurisdiction. In ratifying the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in 1983, Australia made a reservation reflecting the Defence Force practice of excluding women from combat and combat-related positions.
Regulations under the Sex Discrimination Act defined 'combat' and 'combat-related' duties to include direct participation in acts of violence against an adversary in time of war as well as duties in support of or in close proximity to, a person performing combat duties. Also included in the definition of these duties were positions which must be filled by those who have had experience in, or training for, warlike operations and the reserve which must be maintained for casualty replacement, relief from arduous duty and the career development of combat personnel.

However, the Government undertook to open more positions in the Defence Force to women, consistent with maintaining combat preparedness, and in August 1984 the then Minister for Defence, Mr Scholes, the Minister Assisting the Prime Minister on the Status of Women, Senator Ryan, and the then Attorney-General, Senator Gareth Evans, announced the opening of 17,000 positions within the Defence Force to women on the basis of merit in competition with men. On 30 May 1990 the Minister for Defence Science and Personnel, Mr Gordon Bilney, announced the decision that women in the three Services could serve in combat-related positions, thus opening up many more jobs and career opportunities to women. However although it will not be used, the exemption relating to combat-related duties in the Sex Discrimination Act will remain. The Chiefs of Staff Committee is to review implementation of the new arrangements annually, and the policy will be reviewed in June 1993. At the time of this announcement, women made up 11.3 per cent of the Australian Defence Force. Planning to implement the new decision is now well under way.

Women in the Navy will still be excluded from service on submarines, in the Army from positions in Armour, Artillery, Infantry and combat Engineers and in the Air Force from operating combat aircraft with offensive capabilities and from being airfield defence guards.

Advertising

Advertisements which indicate an intention to discriminate on the ground of sex or marital status are proscribed by all five Acts. Specific maximum penalties for placing or publishing such advertisements are set by the Commonwealth, ($1000, or $5000 for a body corporate), South Australian ($1000) New South Wales ($1000) and Victorian Acts (two penalty units - $200). In their 1988-89 Annual Report of the Victorian Commissioner for Equal Opportunity, the Commissioner recommended that financial penalties for discriminatory advertising should be increased to match those applied under the Commonwealth laws. The Draft Equal Opportunity Bill prepared by the Law Reform Commission of Victoria increases the maximum penalty to 20 penalty units.

The Sex Discrimination Commissioner noted in her 1985-86 Annual Report that she received many submissions from people offended by sexist advertising, particularly in newspapers and magazines. The Sex Discrimination Act does not appear to
provide a clear answer to this problem. However, National Agenda for Women planning and programs include:

- support of studies to provide information about the portrayal of women in advertising;
- promotion of guidelines for media presenters and advertisers;
- seeking co-operative development of ideas and strategies with the advertising industry; and
- monitoring progress towards eliminating the unrealistic or degrading depiction of women in advertising.

**Application forms**

The requiring of information on application forms for use in a discriminatory way is specifically forbidden by the Commonwealth and Western Australian Acts. The Law Reform Commission of Victoria has proposed that in Victoria it should be unlawful to ask for information which might provide a basis for discrimination, 'unless it is done for a non-discriminatory purpose'. The Draft Opportunity Bill provides that:

A person must not ask another person to provide information on which discrimination might be based, unless the information is reasonably required for a purpose which does not involve discrimination (cl. 303).

Action proposed under the draft Bill for such an offence varies from a warning from the Commissioner about the requirements of the Act, for the first occasion, to action by the Tribunal on repeated complaints.

**Pregnancy**

Article 11, paragraph 2 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women states:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; and

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.

In ratifying the Convention, Australia entered a reservation on Article 11(2)(b) concerning paid maternity leave.

Pregnancy is a ground for unlawful discrimination under the Commonwealth, South Australian and Western Australian Acts. The South Australian Sex Discrimination Act, 1975 did not specify pregnancy as a ground but in October 1977, the SA Sex Discrimination Board ruled that pregnancy was a female characteristic within the meaning of sub-section 16(2) which concerned indirect discrimination:

A person discriminates against another on the ground of his sex or marital status if he discriminates against him on the basis of a characteristic that appertains generally to persons of that other person's sex or marital status, or a presumed characteristic that is generally imputed to persons of that sex or marital status.

Thus the Board found that discrimination in employment on the ground of pregnancy was unlawful in South Australia. Nevertheless, in her Annual Report, tabled in the Legislative Council on 12 May 1983, the Commissioner for Equal Opportunity recommended changes to the Act to include discrimination against pregnant women as discrimination on the ground of sex. The ground of pregnancy was included in the South Australian Equal Opportunity Act, 1984. However the SA Act provides an exemption if the discrimination is based on the fact that the woman is not, or would not be, able to perform the work adequately without danger to herself or the unborn child, or respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment, where no other reasonably appropriate position in the same employment could be offered to her without encountering these problems.

In terms of the NSW Anti-Discrimination Act, discrimination on the ground of pregnancy or possible pregnancy is a form of direct or indirect sex discrimination. However, under the NSW Act it is not unlawful to discriminate in employment against a woman on the ground of her sex if at the date of application or interview
for a position the woman is pregnant. A woman who was pregnant at the time of interview or application for employment may be lawfully dismissed unless she did not know and could not reasonably be expected to have known that she was pregnant.

Pregnancy is not specified as a ground for unlawful discrimination in the Victorian Equal Opportunity Act 1984. Discrimination on this ground is considered implicit sex discrimination within the definition of a characteristic pertaining to persons of a certain status. The position regarding discrimination if a woman is pregnant at the time of interview or application for a job is unclear. The Victorian Commissioner for Equal Opportunity, in the 1988-89 Annual Report, recommended a specific reference in the Act to pregnancy as a ground. This has been included in the Victorian Law Reform Commission's Draft Equal Opportunity Bill.

All State Acts, as well as the Commonwealth Act, provide that the rights and privileges granted to women in connection with pregnancy or childbirth are not to be regarded as discrimination against other employees.

The 1988-89 Annual Report of the Commissioner for Equal Opportunity in Western Australia recorded numbers of complaints from women working under awards or industrial agreements which specified a compulsory period of maternity leave (six weeks before and six weeks after confinement). The Commissioner regards the compulsory nature of this leave as discriminatory and discussions have taken place with union and industry representatives with the aim of removing the compulsory period.

Requirement of written complaints

The South Australian and NSW Acts require that complaints be made in writing within six months of the alleged act of discrimination (although the NSW Act makes provision for later acceptance at the discretion of the President of the Anti-Discrimination Board). The Victorian and Western Australian Acts require the written complaint within 12 months. However, the Equal Opportunity (Amendment) Act 1985 (Vic.) provides that in Victoria the Commissioner may, if satisfied that there is good cause, extend the time for lodging of a complaint, whether or not the time has expired. The Commonwealth Act provides that the Commissioner may decide not to inquire or continue to inquire into an act if a period of more than 12 months has elapsed since the act.

The Commonwealth, Western Australian and NSW Acts make provision for representative complaints, for example by a trade union on behalf of members, and for the joining of parties. The Victorian Act provides for the joining of two or more parties. The Law Reform Commission of Victoria believes that express provision for representative complaints should also be made and has included such a clause in its Draft Equal Opportunity Bill.
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The requirement of a written complaint, and the prospect of conducting a single action, are seen as barriers to disadvantaged sections of the community such as Aboriginal, migrant and country women. A single complainant is unlikely to be able to match the resources of a large organisation or government department in an adversary situation.

Sexual harassment

The Commonwealth Act outlaws sexual harassment in the areas of employment and education. The Western Australian Act also prohibits sexual harassment relating to the provision or control of accommodation, and the Victorian and South Australian Acts make sexual harassment illegal in the areas of employment, education and the provision of goods, services and accommodation. Some differences exist in the definitions of sexual harassment but the common factors are the unwelcome nature of the action and the implicit disadvantage in refusing or objecting to the advance or harassment. The Commissioner for Equal Opportunity in Victoria has recommended the strengthening of the sexual harassment provisions to cover:

- harassment by a fellow worker or subordinate;
- a single act of harassment;
- specific reference to sexual harassment in education; and
- sexual harassment by a fellow student

The Victorian Law Reform Commission has also proposed replacing the wording 'sexual advances' and 'persistent sexual suggestions and innuendo' (s 20 (1) of the Victorian Equal Opportunity Act) with wording more in line with the Commonwealth definition of 'unwelcome sexual advance' 'unwelcome request for sexual favours' or 'unwelcome conduct of a sexual nature', which could apply to a single act of harassment.

The New South Wales Anti-Discrimination Act does not deal specifically with sexual harassment, although discrimination on the grounds of both sex and homosexuality are proscribed. The Equal Opportunity Tribunal in NSW has held that sexual harassment could constitute discrimination on the ground of sex, and sexual harassment cases are dealt with under this ground.

Vicarious liability

Under the Commonwealth, Victorian, South Australian and Western Australian Acts, a person (or employer) is liable for unlawful acts done by employees or agents unless
it is established that the person took all reasonable steps to prevent the unlawful acts. The NSW Act makes principals or employers liable for acts of their agents or employees unless they 'did not, either before or after the doing of the act, authorise [the doing of the act], either expressly or by implication'.

In the case of sexual harassment different approaches are taken to vicarious liability. The Victorian Act provides that an employer or supervisor is liable if an employee sexually harasses another in the course of employment if the employer or supervisor knowingly permitted the harassment. In the matter of other forms of discrimination by an employee or agent, the employer may be liable unless he or she took reasonable precautions to ensure that it did not occur. The South Australian Act states that a person is not vicariously liable for an act of sexual harassment committed by an agent or employee, 'unless he instructed, authorised or connived at that act'.

Language

A major objective of sex discrimination legislation is its educative effect. With this in mind, the use of masculine terms in the drafting to apply to persons of either sex can be regarded as ironic. The Commonwealth Sex Discrimination Act and the Western Australian Equal Opportunity Act are phrased in gender neutral terms. In 1984 the Federal Government amended the Acts Interpretation Act 1901 to replace the provision that words importing the masculine gender were taken to include the female gender, unless a contrary intention appeared (s 23). The amendment provided that, unless a contrary intention appeared, words importing one gender should be taken to include the other.

The Victorian Equal Opportunity Act was amended in 1985 to remove gender specific language. Thus the 'Chairman' of the Equal Opportunity Board became the 'President' of the Equal Opportunity Board. The Equal Opportunity (Amendment) Act 1987 also removed gender specific or 'discriminatory' language from many other Victorian Acts. In 1989 the South Australian Equal Opportunity Act, 1984 was also amended extensively to gender neutral terminology throughout.

The NSW Anti-Discrimination Act and amendments up to 1982 were phrased in masculine terms, but subsequent amendments have used gender neutral terms. Some redrafting is necessary to overcome the necessity for explanatory sub-sections such as 31(5):

Sub-sections (1), (2) and (3) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference therein

(a) to a man were a reference to a woman; and
(b) to a woman were a reference to a man.
On 30 May 1990 Senator Dunn introduced a Private Senator's Bill, the Legislation (Non-Sexist Language) Bill 1990, into the Senate. The purpose of the Bill was:

to remove sexist and discriminatory language from Commonwealth legislation and to declare the intention of the Parliament that language used in future legislation should be non-sexist.

In her Second Reading speech Senator Dunn acknowledged that the Government's legislative drafting policy was now no longer to use references to only the male gender when both male and female were intended to be included. However she thought that this important policy should have a statutory commitment. One reason for this is the propensity of language to influence the position of women in society.34

In January 1989 the State Attorney-General directed the Law Reform Commission of Victoria to review the Equal Opportunity Act and to prepare a 'plain English' Bill incorporating proposed changes into the Act. The Commission's plain English Bill, presented for discussion in March 1990, is very different in style from the other equal opportunity, anti-discrimination or sex discrimination Acts. According to the Commission, such radical change is necessary if the legislation is to be understood by its main audiences: people whose conduct is regulated by the prohibitions, and people who have suffered discrimination.

Achievements and Goals

As can be seen, although the basic objectives of Federal and State legislation on sex discrimination and equal employment opportunity are similar, there are numerous differences in the provisions. The co-location of, and co-operation between, Human Rights and Equal Opportunity Commission offices and those of the State Commissions and Boards, will help to minimise areas of confusion, and assist clients in deciding under which legislation to bring a complaint.

In the area of equal employment opportunity there are areas of overlap between the Affirmative Action (Equal Employment Opportunity for Women) Act (Cth) and State legislation. Higher education institutions, for example, were already covered by the Anti-Discrimination Act (NSW) and the Equal Opportunity Act (WA) before the 1986 Commonwealth Act came into operation, and in NSW, at least, equal employment opportunity programs were already being developed to the perhaps more demanding requirements of the State legislation. Discussions between the Director of Affirmative Action and the Directors of Equal Opportunity in Public Employment in both New South Wales and Western Australia, were required to develop co-operative arrangements in regard to the different reporting styles required under the Commonwealth and State legislation.

Some measures of the success of the Commonwealth and State sex discrimination legislation may be
that the majority of complaints are settled by conciliation

that only a very small number of complaints proceed to a Federal Court or Supreme Court hearing

that all higher education institutions and all but a very few (eight) private industry companies had reported as required by the Affirmative Action (Equal Employment Opportunity for Women) Act

that all Australian Government public service departments have equal employment opportunity programs

that guidelines to employers and community education programs have been prepared on aspects of discrimination, such as pregnancy and sexual harassment.

Even the growth each year in the number of complaints of discrimination may be regarded as a measure of the growing understanding in the community that such discrimination is illegal and that there are avenues for combating it and providing redress or compensation.

On the other hand, it is clear that the aim of equal employment opportunity has not been attained and that progress is, at best, slow.

For adult employees, in May 1990, women's full-time ordinary time average weekly earnings were 83 per cent of men's, and for full-time average total earnings the female/male proportion was 79 per cent. For all employees average weekly total earnings, the female/male proportion was 66 per cent. In the December quarter of 1975 the female/male proportion for all employees average weekly total earnings was 65 per cent and this has changed little in the past 15 years.

Reasons identified for the disparity in wage levels, prompting affirmative action and equal employment opportunity legislation, included the lower awards for traditionally female occupations, the high degree of occupational and industry segregation of women workers, and the predominance of women in part-time employment.

Australia has the highest incidence of occupational segregation of the OECD countries, and one of the highest incidences of industrial segregation. Women are concentrated in the lowest-paid levels in industry. Only 22 per cent of Australia's 500,000 senior managers are women.

One aim of affirmative action and equal employment opportunity programs is to encourage more women into non-traditional areas of employment. Opportunities in traineeships and the trade-training system are important as only about 12 per cent
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of apprenticeships are held by women. However, the introduction in July of this year of the Training Guarantee Levy Scheme caused further fears of loss of momentum in the push for equal employment opportunities. No provision is included in the Training Guarantee Act that the training be provided on a fair and equitable basis.

Concern has also been expressed that equal employment opportunity principles may be overlooked in the award restructuring process. It has been pointed out that award restructuring presents 'a golden opportunity to address the issues of relativity, skills recognition, work flexibility and training in one of the most sex segregated work forces in the industrialised world'. The Minister for Industrial Relations, Senator Cook, announced a grant to the Affirmative Action Agency for monitoring and analysis of the effect of award restructuring initiatives on women in the work force. Two new units within the Department of Industrial Relations, a Work and Family Unit and an Equal Pay Unit, will advise on these areas and on Australia's progress in terms of its responsibilities under ILO Convention 156 on Workers with Family Responsibilities, ratified in March 1990.

For the Australian Government's own employees, equal employment opportunity programs were set in place following the enactment of the Public Service Reform Act in 1984. In the Australian Public Service, the representation of women in the Senior Executive Service (SES) and senior Administrative Service Officer (ASO) positions has increased since 1986. In June 1990, 11.2 per cent of SES officers were women, compared with 3.9 per cent in 1984 when the SES was formed. However, women still tend to be at lower levels than men with the same educational qualifications and length of service. Studies have shown that if women and men with the same qualifications and length of service had reached the same levels, in June 1989 there would have been about 60 per cent more women in ASO8 positions, and almost twice as many in the SES.

In regional offices women (and other designated groups) appear to be particularly under-represented at senior levels. The 1987-88 Annual Report of the Public Service Commissioner noted that arrangements made for the devolution of the Board's EEO functions in the regions were still inadequate, and that there had been a drop in the average level of EEO activity in the regions. This Report stated:

Many of the former Board functions cannot be performed efficiently - or in practice, cannot be performed at all - by individual regional offices of departments working alone. The specialist expertise involved cannot be duplicated in all departments, and programs for small minorities need to be co-ordinated on an interagency level to be viable.

The 1988-89 Annual Report of the Human Rights and Equal Opportunity Commissioner noted that:
... the Commonwealth has been named in 17 cases this year (compared with 10 a year ago) - an increase that has been paralleled in telephone enquires and in other informal complaints. This appears due in part to cutbacks in resources for EEO programs in Commonwealth agencies. Apparently, a number of complaints which would formerly have been handled internally by EEO officers have, in the past twelve months, been referred to the Commission instead.

Conclusion

A continuing commitment to the programs developed to implement the legislation can be seen as vital.

Although most complaints concern employment matters (375 of the 575 complaints lodged under the Sex Discrimination Act in 1988-89 were in the area of employment) matters resolved by the Commissioners or Boards include complaints in the areas of goods, services and facilities, clubs, advertising, accommodation and, to a lesser extent, the other areas covered by the legislation. Exemptions in these areas are continually reviewed, and guidelines for the community are produced.

Legislation is only one of a number of strategies in place to work towards equal opportunity for women. Education programs and the wider National Agenda for Women are at least equally important. Legislation alone cannot produce the changes required, but it does play an important part in changing community attitudes and expectations.
Appendix 1

COMPARATIVE TABLE OF SEX DISCRIMINATION ACTS

Abbreviations:

| SDA | Sex Discrimination Act 1984 (Commonwealth) |
| ADA | Anti-Discrimination Act, 1977 (New South Wales) |
| EOA (SA) | Equal Opportunity Act 1984 (South Australia) |
| EOA (Vic) | Equal Opportunity Act 1984 (Victoria) |
| EOA (WA) | Equal Opportunity Act 1984 (Western Australia) |

* no provision

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Note: The *Royal Commissions Act 1923* (NSW) and the *Royal Commissions Act 1968* (WA) have relevant provisions concerning evidence and offence.
Appendix 2

Major Commonwealth and State legislation in the areas of sex discrimination and equal opportunity for women.

Commonwealth

Sex Discrimination Act 1984
Human Rights and Equal Opportunity Commission Act 1986
Public Service Reform Act 1984
Equal Employment Opportunity (Commonwealth Authorities) Act 1987

New South Wales

Anti-Discrimination Act, 1977

Victoria

Equal Opportunity Act 1984
Public Service Act 1974

South Australia

Equal Opportunity Act, 1984
Government Management and Employment Act, 1985

Western Australia

Equal Opportunity Act 1984
Appendix 3


**LEGISLATION TO WHICH PARAGRAPH 40(1)(a) OF THE ACT APPLIES**

**Part 1 - Commonwealth**

*Defence Act 1903*, Part IV (other than subsection 60(3))
*Defence Service Homes Act 1918*
*Gift Duty Assessment Act 1941*
*Income Tax Assessment Act 1936*
*Income Tax (International Agreements) Act 1953*
*Marriage Act 1961*, sections 11, 12, 77 and 78
*National Health Act 1953*, section 4 (definition of "pensioner"), section 84 (definition of "concessional beneficiary"), paragraphs (bc) and (j) in the Schedule
*Sales Tax (Exemption and Classifications) Act 1935*
*Student Assistance Act 1973*
*Taxation (Unpaid Company Tax) Assessment Act 1982*
*War Gratuity Act 1945*

**Part 2 - New South Wales**

*Factories, Shops and Industries Act 1962*, section 36
*Landlord and Tenant (Amendment) Act 1948*, Part V

**Part 3 - Victoria**

*Local Government Act 1958*

**Part 4 - Queensland**

*Factories and Shops Act 1960*
Part 5 - Western Australia

Child Welfare Act 1947
Pearling Act 1912, subsection 82(2)

Part 6 - Tasmania

Industrial Safety, Health, and Welfare Act 1977
Mines Inspection Act 1968

Part 7 - Australian Capital Territory

Adoption of Children Act 1965
Inebriates Act 1900 (N.S.W.), section 2
Inebriates (Amendment) Act 1909 (N.S.W.), section 5

Part 8 - Christmas Island

Married Women and Children (Maintenance) Ordinance
Muslims Ordinance
Penal Code, sections 375, 376A, 376B, 376C and 493

Part 9 - Cocos (Keeling) Islands

Married Women and Children (Maintenance) Ordinance
Muslims Ordinance
Penal Code, sections 375, 376A, 376B, 376C and 493

Part 10 - Norfolk Island

Social Services Act 1980

LEGISLATION TO WHICH PARAGRAPH 40(1)(b) OF THE ACT APPLIES

Part 1 - Commonwealth

All regulations, rules, by-laws, determinations and directions made under any of the following:

Gift Duty Assessment Act 1941
Income Tax Assessment Act 1936
Sex Discrimination Legislation in Australia

Sales Tax (Exemptions and Classifications) Act 1935
Student Assistance Act 1973

Part 2 - New South Wales

Regulation 2 of the Land Regulations made under the Factories, Shops and Industries Act 1962

Part 3 - Queensland

All regulations, rules, by-laws, determinations and directions made under the Factories and Shops Act 1960

Part 4 - Tasmania


Part 5 - Australian Capital Territory

Adoption of Children Regulations
Bibliography

A Parliamentary Library Information Services Bibliography of current articles on Sex Discrimination and Affirmative Action has been prepared by Paula O'Brien (06-2772516) and Cathy Madden (06-2772522). Historical reading could include:


Anti-Discrimination Board (NSW) *Annual Reports* from 1978 on.

Equal Opportunity Board and the Commissioner for Equal Opportunity (Victoria) *Annual Reports*.

Office of the Commissioner for Equal Opportunity (South Australia) *Annual Reports*.

Commissioner for Equal Opportunity (Western Australia) *Annual Reports*.

ENDNOTES


3. The Conciliation and Arbitration Act was replaced by the *Industrial Relations Act 1988*. The *Sex Discrimination Act 1984* was therefore amended by the *Industrial Relations (Consequential Provisions) Act 1988* to cover organisations 'within the meaning of the *Industrial Relations Act 1988*. A similar amendment was made to the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*.


8. Amended by the *Employment, Education and Training Act 1988*.


11. The definition of impairment in the *Equal Opportunity Act 1984* was widened by the *Health (General Amendment) Act 1988* to include 'the presence in the body of organisms causing disease' and 'an impairment which is imputed to a person'. To the exemptions covering discrimination on the ground of impairment was added 'where the discrimination is reasonably necessary to protect public health'.


13. Infra p.28.


16. From the Office of the Minister Assisting the Premier on the Status of Women, Hon Fran Bladel, MHA, 7 September 1990.


