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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE AMENDMENT BILL 1999

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Workplace Relations and Small Business, the Honourable Peter Reith MP)

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EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE AMENDMENT BILL 1999

OUTLINE

This Act will amend the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (the Act), which will be retitled as the *Equal Opportunity for Women in the Workplace Act 1999*, to make the Act more effective and efficient for both women and for business.

The legislative reforms are directed at achieving genuine equality of opportunity for Australia's working women, further emphasising a facilitative rather than punitive approach to compliance. These reforms are important in protecting and promoting women's entry and participation in all levels of the workplace, while promoting high productivity by ensuring that Australian business is not burdened by an unnecessarily complex level of paperwork or costs associated with compliance, and by facilitating the best use of human resources.

The Act is framed to complement a workplace relations framework based on co-operative workplace arrangements, and one that provides effective choices to employers and employees about the arrangements which suit their particular circumstances. The Act promotes consultation within employing organisations and also provides scope for employers to be flexible in the way they meet the requirements of the Act.

Key reforms to be implemented by the Act are as follows:

- renaming the Act the *Equal Opportunity for Women in the Workplace Act 1999* to accurately reflect the intention of the Act and to reflect the emphasis in Australia placed on merit and a fair go for all;

- introducing an objects clause for the Act to clarify the objectives of the legislation for relevant employers, that is, to: promote the principle that employment for women should be dealt with on the basis of merit; promote the elimination of discrimination and the provision of equal employment opportunity for women in relation to employment matters amongst employers; and foster workplace consultation between employers and employees on equal opportunity for women in relation to employment;

- replacing the previously prescriptive 'eight step' affirmative action program with a new emphasis on workplace priorities and achievements, allowing employers a greater degree of flexibility and innovation in the way they achieve equal employment opportunity for women. The new approach requires employers to prepare a 'workplace profile' (based on factual information about the workforce) and analyze the profile to identify issues that the employer would need to address to achieve equal opportunity for women in that workplace. The employer selects the priority issues identified in the analysis, and sets out the action to be taken in relation to the priority issues. The workplace program also evaluates the effectiveness of actions taken in achieving equal opportunity for women in the employer's workplace;

- effectively halving the paperwork burden on reporting employers by changing the reporting requirement from an annual requirement to a biennial one;

- streamlining and simplifying the reporting process, by amending the reporting framework to accurately reflect the revised focus on outcomes and achievements. Reporting employers will: report on the outcomes of the employer's programme during the reporting period by describing the analysis which was undertaken, including the workplace profile; describing the actions which were taken, and reporting on the evaluation of the actions. Employers will also present a forward action plan for the next reporting period;

- allowing an employer to be waived from reporting for a specified period when the Agency is satisfied that the employer has taken all reasonably practicable measures to address the issues relating to employment matters that affect equal employment opportunity for women in the employer's workplace; and

- allowing the Agency to seek information from employers covered by the Act on the workplace program, the preparation of the reports or the report itself.

FINANCIAL IMPACT STATEMENT

Impact on the Budget

A total of $310,300 over three years has been provided to implement measures directly related to changes to the legislation. Funding has been provided for the marketing and promotion of the changes to the Act, the design and provision of revised guidelines and educative material for industry as well as for the development of a new reporting form. Additional funding totaling $389,700 has been provided to implement measures not requiring legislative change such as the establishment of an Advisory Board.

Impact on the economy generally

This measure is aimed at improving the operation of the legislation by increasing the flexibility available to employers in complying with the Act and by reducing the paperwork burden on reporting employers. The increased flexibility made available to employers should also enhance the effectiveness of equal employment opportunity arrangements and outcomes.

REGULATION IMPACT STATEMENT

Background

The *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (the Act) currently requires all organisations with 100 or more employees to develop and implement affirmative action programs for women and to report annually to the Affirmative Action Agency (the Agency) on the progress of these programs. Failure to submit a report or failure

to provide evidence of a program may result in the employer being named when the Agency's Annual Report is tabled in Parliament.

In order to meet the 1995 Competition Principles Agreement, the federal Government put in place a comprehensive four-year program of review of existing legislation which may restrict competition as well as legislation which is costly for business. Under this program the Act was identified for review in 1997/98.

The independent committee charged with undertaking the review presented its findings and recommendations to the Government. The Government decided upon the measures contained in the present Bill on the basis of an assessment of the impact of identified options as set out below.

Problem

The Act was introduced to address an inequality of employment opportunity for women. Information received from submissions, roundtables, surveys, commissioned and other available research, indicates that equal employment opportunity issues had not been resolved at workplaces in Australia in the areas originally focussed on by the Act in the 12 years since the Act had been in place. In particular, earnings differences, patterns of horizontal and vertical employment segregation, and industry training issues remain.

In addition, the deregulation of the labour market, the downsizing and restructuring of Australian businesses, the globalisation of the economy and the associated shift to a workplace focus on increasing productivity and flexibility, have all broadened the issues raised by equal employment opportunity at the workplace since the legislation was introduced.

Objective

The objectives of the Act are to address the problem of inequality of employment opportunity for women by requiring employers of 100 or more employees to report on a program including analysis of their workforce and a plan of action to enhance equal employment opportunity (EEO).

Small businesses are not covered by the requirements of the Act because of resource implications for small businesses in developing, and for Government in processing, the reports on affirmative action plans.

Options

In examining alternative ways of delivering EEO to women, three primary options were considered:

(A) no regulation – thereby relying on non-legislative and non-regulatory ways of promoting EEO for women;

(B) retention of the current legislation without amendment;

(C) retention of the current legislation with amendment to reduce compliance costs and, in particular, the paperwork burden on reporting organisations, and to enhance the effectiveness and efficiency of the legislation for employers and women in the workplace.

Impact analysis

A. No regulation

Costs and benefits for government

Deregulation could inhibit growth in Australian competitiveness because of a failure to fully and effectively utilise the national human capital. In this sense, deregulation would be contrary to meeting the Government's economic and social policy objectives. Deregulation would also compromise the Government's commitment to meet the terms of the 1995 Competition Principles Agreement, in that repeal of the legislation would not ensure that the objectives of the legislation are being met in the most effective and efficient way.

Removing the role of the Agency in entirety would result in cost savings to the Government in the order of $2.44m per annum (based on the Agency's current annual budget). However, any such gain could be offset by administrative costs associated with dealing with an increase in discrimination complaints made under anti-discrimination and workplace relations legislation that might occur were deregulation to occur.

Costs and benefits to business

The costs to individual businesses of deregulation could manifest in a number of ways: higher absenteeism, increased staff turn-over, and reduced productivity. Organisations may also incur legal costs associated with an increased number of discrimination complaints, estimated to be up to $100 000 per complaint. Further, overall firm performance may suffer as a result of not having an equal employment program in place – analysis indicates that firms with strong equal employment programs have an average annualised return on investment of 18.3 per cent over five years, compared to only 7.9 per cent for those which rated lower on such measures. [1]

1 A substantial analysis of the benefits and costs for business associated with compliance with the Act is contained at Section 4 of the report of the regulatory review: *Unfinished Business: Equity for Women in Australian Workplaces*.

While it is acknowledged that business incurs administrative and other costs as a result of the Act, few employers have been able to provide estimates on overall costs associated with compliance. The Committee reviewing the Act conservatively estimated that aggregate cost to employers of preparing annual reports at $6.7m per year. On the basis of available evidence the Committee found that on balance the costs to individual businesses are outweighed by the benefits of having an effective equal opportunity program in place.

Further, while it was found that there appeared to be sufficient incentives in place for organisations to have equal opportunity programs, the Committee was not convinced that all organisations would continue to implement such programs were the legislative basis to be removed. Anecdotal evidence suggested that, particularly in smaller companies covered by the Act, strategic human resource programs may come under pressure from more immediate financial considerations. Additionally, a small number of organisations who responded to the reporting organisations' questionnaire, reported that they would not continue with affirmative action programs were it not for the legislation, even though some of these reported benefits accruing from implementation of their programs.

Costs and benefits to consumers

Deregulation would be expected to have little, if any, direct impact on consumers. The absence of an equal employment opportunity legislative framework could have some detrimental impact if consumer interests were not addressed because organisations were less likely to have both men and women represented on their management team.

Costs and benefits to the community

Submissions, roundtable consultations and research conducted for the review indicate that neither working women nor men would benefit from a failure to address discriminatory employment practices in a proactive way. Further, a failure to fully and effectively utilise the national human capital would be detrimental to Australia's competitiveness and the economy generally. For example, with respect to recruitment procedures, a United States' research project has indicated a $US43-54 billion loss in national productivity through the lack of effective selection processes. [2]

A very small sector of the community believes that deregulation would be beneficial in encouraging a return to traditional gender roles. This outcome was not supported by the vast majority of groups and people who participated in the review, and based on available evidence is not likely to support broad economic objectives.

Summary: The Government agrees with the committee that the case for deregulation was not

2 A substantial analysis of the wider economic benefits and costs associated with compliance with the Act is contained at Section 4 of the report of the regulatory review: *Unfinished Business: Equity for Women in Australian Workplaces*.

strong and that, on balance, the benefits of maintaining affirmative action within a legislative framework outweigh the costs. Based on the outcomes from consultations held for the review, and on international experience, there appears to be strong public sentiment that equal employment opportunity for women still requires regulation to further the objectives of the Act.

B. Retention of current legislation without amendment

Costs and benefits to government

If the legislation was retained the Government would incur the on-going costs associated with the administration of the Act (approximately $2.44m annually). This option would impede achievement of the Government's policy objectives of decreasing the regulatory burden on business, and reducing the paperwork burden on business.

The Government would continue to derive beneficial effects from the contribution the Act makes to economy by the more efficient allocation and development of labour force skills. [3]

Costs and benefits to business

Maintenance of the existing legislation without amendment would result in business continuing to incur the aggregate $6.7m that they are currently estimated to spend each year on complying with the Act. They will also be subject to costs if this model is not the most efficient and effective model for achieving equal employment opportunity and optimally adapted to their own operating and reporting priorities.

Reduced absenteeism, reduced staff turn-over and better retention of skilled staff, enhanced ability to attract and deploy staff; increased productivity, and enhanced company image would continue to be generated but not as effectively or efficiently as possible. Business would continue to make savings by the avoidance of legal costs incurred in defending claims of discrimination, sexual harassment or for equal pay. [4]

In conducting its consultations, the Committee also found that there was a view among human resource managers that the requirements of the Act led managers and executives to look more closely at human resource management issues generally. This in turn, it is believed, has led to more effective staff management and improved productivity.

Costs and benefits for consumers

3 Ibid.

4 A substantial analysis of the benefits and costs for business associated with compliance with the Act is contained at Section 4 of the report of the regulatory review: *Unfinished Business: Equity for Women in Australian Workplaces*.

Retention of the current legislation without amendment would be expected to have little, if any, direct impact on consumers.

Costs and benefits for the community

The cost of retaining the current legislation for the community is expected to be minimal. A very small sector of the community interested in preserving the traditional gender roles may argue that retention a regulatory framework supporting equal employment opportunity confers costs upon society in terms of disadvantaging men.

Evidence suggests that the legislation is beneficial in a number of ways, for example that women, and men, who have the opportunity to work in an environment free from discrimination are more likely to reach their full potential, leading to a positive impact on the national skills base and on the economy generally. [5]

Summary: The Government concurred with the committee's view that the current model for the broad regulatory framework for equal employment opportunity in Australia is the preferred model. However, it agreed that this model required modification to ensure it is consistent with building more cooperative relations between the regulators and Australian business, as well as other reporting organisations, and to make the Act more effective and efficient in terms of meeting its objectives.

C. Retention of the current legislation with amendments

The following impact analysis is based upon the costs and benefits expected to be experienced following the implementation of the recommendations agreed by the Government and reflected in the present Bill.

Costs and benefits for government

In addition to the current $2.44m expended annually on the administration of the Act, a one-off funding package of approximately $700 000 over three years is being sought to cover: change of name for the Act, Agency and Director; establishment of the Advisory Board; design and printing of a new report form; the development and dissemination of educational material; and the marketing and promotion of the proposed changes to business and the community. There will also be ongoing costs associated with providing support to the Advisory Board.

Government will benefit from a modified model by better meeting its policy objectives of decreasing the regulatory burden on business and moving towards a more business-regulated model; and from increased efficiency of its arrangements to ensure fair treatment for working

5 Ibid.

women at the workplace. Implementation of the report's recommendations will also address the Government's commitment to reducing the paperwork burden on business.

Resource benefits to government are expected to be realised through a reduction in costs associated with administering a streamlined reporting process, including: extending the minimum reporting requirement from one year to two; the removal of the ratings system; the continuance of waiving provisions; and the processing of a simplified form. The resources will be internally reallocated within the renamed Equal Opportunity for Women in the Workplace Agency (the Agency).

Costs and benefits for business

The benefits to business include costs savings based on the revised reporting arrangements, such as complying organisations only being required to report every second year (as opposed to the current annual requirement) and the introduction of a streamlined simplified reporting format. Based on estimates provided by the Committee, complying employers will save, in aggregate, $3.5million annually, or $7 million each reporting cycle, in terms of the paperwork burden associated with reporting. This is calculated on the basis that, for the vast majority of organisations, the extension of the reporting cycle will effectively mean that reporting costs will be halved. Also, because the requirements themselves will be less onerous, further savings at the time of reporting are expected to be realised. Business may also experience benefits through the more relevant and effective application of equal employment opportunity in the form of enhancing those staff management benefits already being realised under the current arrangements such as reduced absenteeism and reduced staff turn-over.

Business is also expected to benefit through its representation on the Advisory Board. As a major stakeholder, business should be able to more effectively express, and have addressed, any concerns and proposed efficiencies related to the operation and administration of the Act, including sanctions.

Costs and benefits for consumers

The proposed amendments are expected to have little, if any, direct impact on consumers. Arguably, a more effective equal employment opportunity framework is likely to be associated with consumer interests being better served by organisations who have more representative management teams.

Costs and benefits for the community

It is expected that there will be multiple benefits to the community in making the Act more efficient and effective.

It is expected that amending the name of the Act will result in removing some of the

misunderstandings and misconceptions over preferential treatment and quotas, thereby placing the emphasis on merit and equality of opportunity. This will be beneficial in removing, from the workplace and from the community more generally, any residual hostility associated with incorrect notions of 'reverse' discrimination.

Stakeholders will also directly benefit from having representation upon the Advisory Board, which will serve as a forum to express concerns and views about the operation and administration of the Act.

Summary: the Government agreed that this was the favoured option. This option will continue to further the objectives of the Act, while being more business-friendly and reducing the costs to business associated with compliance. The recommendations as qualified and agreed by Government, will assist in making the arrangements under this legislation more administratively efficient.

It is not expected that the proposed amendments will have any detrimental impact on competition.

Effect on small business

Adoption of the preferred option will have no cost impact on small business. Small business (in this context, those businesses with fewer than 100 employees) are not covered by the reporting or compliance provisions of the Act.

Small business may benefit from an increased emphasis by the Agency on education and research, which may be directly targeted to the small business sector.

Impact on competition

The Government agreed that retention of the legislation could be considered to have a marginal effect on competition in two possible circumstances. First, there may be an effect if an organisation were precluded from tendering for Commonwealth contracts because of non-compliance with the Act (as currently provided for under a contract compliance policy). In the unlikely event that even a small number of firms were affected, the negative effect on competition be marginal compared with the overall benefits of legislating to support equal opportunity for women in the workplace.

Second, the reporting requirements of the Act do entail costs. Given that all organisations with more than 100 employees are required to report, this is unlikely to impact to any substantial degree on domestic competition. However, reducing the reporting costs for business beyond the streamlined model proposed would proportionately lessen the impact, if any, on competition.

Consultation

In undertaking the review, the Committee conducted consultations through three primary mechanisms:

(a) the production and distribution of an Issues Paper that called for submissions;

(b) direct consultation with targeted organisations and individuals; and

(c) public consultations.

The Committee prepared an Issues Paper that described the Review process and the issues that were considered central to the Review. The Issues Paper was distributed to all organisations that report to the Affirmative Action Agency under the legislation, employer and employee groups, national and State women's organisations and other relevant community organisations, Working Women's Centres, relevant federal and State/Territory government departments and to interested individuals on request. Approximately 4500 copies of the Issues Paper were distributed throughout Australia. In addition, it was posted on the Internet site of the Department of Workplace Relations and Small Business.

The Committee received 180 submissions from reporting organisations, employer and employee groups, national and State women's organisations and other relevant community organisations, Working Women Centres, relevant federal and State/Territory government departments and interested individuals. Consultation with specific organisations or individuals took place when opportunities arose and when the Committee sought to fill identified gaps in research and information.

A questionnaire was distributed to all reporting organisations to collect opinion-type data on the cost effectiveness of EEO/AA initiatives and the process of reporting under the Act. A total of 996 useable questionnaires were returned equaling a response rate of 37 per cent.

During March and April 1998 the Committee conducted roundtable consultations in all State and Territory capital cities, to discuss issues and explore the costs, benefits, regulatory framework and possible future direction of the regulatory aspects of affirmative action with interested parties. The roundtables were advertised in major metropolitan newspapers issuing an open invitation for any interested parties to attend. In total over 160 people attended these roundtables.

In the course of these consultations, a small proportion of the business sector advocated the dismantling of the Act based on the level of costs incurred through reporting. A very small proportion of the community sector expressed similar sentiments based on a perception that the Act disadvantaged men and was anti-family. While these views were taken into account, the Committee concluded that they were not representative of the substantial majority of those people who contributed to the review, and nor were these beliefs satisfactorily

substantiated by any evidence presented.

A significant majority of participants supported the retention of the existing regulatory framework. There was general agreement among the business sector that the reporting requirement needed to be made less onerous. In the main, other community and trade union groups accepted this view. There was consensus among all groups (excepting a small proportion of women's representatives) that consideration should be given to amending the name of the legislation. There was also majority acceptance of: providing clear objects for the Act, the introduction of voluntary guidelines, removal of the current 'eight steps' requirement, moving to biennial reporting, dismantling the ratings system, and the continuation of the waiving system.

A small proportion of participants from a variety of sectors advocated broadening the focus of the Act to cover a range of special-needs groups. The taking of any such action was rejected as being too costly to business, and not within the ambit of the objectives of the legislation.
A proportion of the women's organisations argued for increasing the scope of the Act to include organisations with fewer than 100 employees. This was rejected as being too burdensome to small business.

Conclusion and recommended option

The Government concluded, based on the evidence presented by the Committee, that enhanced legislation, based on the existing broad regulatory framework, would best meet the objectives of the existing legislation. The Equal Opportunity for Women in the Workplace Amendment Bill 1999 gives effect to this view.

Implementation and review

The Equal Opportunity for Women in the Workplace Agency (the Agency) will be responsible for administering the proposed changes. In addition to the Agency's educational and promotional role, a key function of the Agency is to ensure compliance with the Act. This is achieved by scrutiny of reporting organisations' reports, and by the Director seeking further relevant information from organisations where necessary and/or appropriate.

Most of the proposed changes to the Act will come into effect on the day on which the Bill receives the Royal Assent. Under the revised arrangements, the first report that organisations covered by the Act will be required to submit will be in respect of the period of twelve months commencing 1 April 2000. Thereafter reports will be required in respect of each consecutive period of two years from 1 April 2001.

The effectiveness of the proposed amendments in addressing the problem of inequality of employment opportunity for women will be monitored by the Agency. The Agency will

assess the effectiveness of requiring employers of 100 or more employees to report on a program, including analysis of their workforce and a plan of action to enhance EEO, in its annual report.

NOTES ON CLAUSES

Clause 1 – Short title

1. This is a formal provision that would specify the Act's short title as the *Equal Opportunity for Women in the Workplace Amendment Act 1999*.

Clause 2 – Commencement

2. This clause would provide for the commencement of the Act.

3. Subclause 2(1) proposes that the four clauses of the Bill, and Schedule 2 to the Bill, would commence on Royal Assent. The effect of this would be that name of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* will be changed to the *Equal Opportunity for Women in the Workplace Act 1999* from the date of Royal Assent.

4. Subclause 2(2) provides that Schedule 1 and Schedule 3 to the Bill would commence on 1 January 2000.

Clause 3 – Schedule(s)

5. This is a formal clause that would provide that an Act that is specified in a Schedule is amended or repealed as set out in the Schedule; and any other item operates according to its terms.

Clause 4 – Definitions

6. This is a technical provision which would ensure that the Schedules will be effective notwithstanding that the name of the Act will be changed to the *Equal Opportunity for Women in the Workplace Act 1999* by item 1 of Schedule 2 to the Act.

SCHEDULE 1 – EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE

PART I – AMENDMENT OF THE EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE ACT 1999

Item 1 – Title

1.1 Consistent with renaming the Act the *Equal Opportunity for Women in the Workplace Act 1999*, this item would change two references in the title to refer to 'equal opportunity for women in the workplace' instead of 'affirmative action'. This change is intended to emphasise principles of merit and a fair go for all.

Item 2 – After section 2

1.2 This item would insert a new section 2A. The new section provides that the principal objects of the Act are to:

- promote the principle that employment for women should be dealt with on the basis of merit; and

- promote the elimination of discrimination and the provision of equal employment opportunity for women in relation to employment matters among employers; and

- foster workplace consultation between employers and employees on issues concerning equal opportunity for women in relation to employment.

Item 3 – Subsection 3(1) (definition of *affirmative action program*)

1.3 This item proposes to repeal the existing definition of 'affirmative action program'. The definition will not be used in the amended Act, as item 7 proposes to insert a new definition of 'equal opportunity for women in the workplace program'.

Item 4 – Subsection 3(1) (definition of *Agency*)

1.4 Consistent with the name change to be effected by item 1 of Schedule 2 this item would ensure that the 'Affirmative Action Agency' will become the 'Equal Opportunity for Women in the Workplace Agency', after 1 January 2000.

Item 5 – Subsection 3(1) (definition of *amalgamated institution*)

1.5 The definition of 'amalgamated institution' is only used in section 13 of the Act. The term will not be used after item 21 removes the existing provision, consequently this item proposes to remove the definition.

Item 6 – Subsection 3(1) (definition of *Director*)

1.6 Consistent with the name change to be effected by item 1 of Schedule 2 this item would change the name of the 'Director of Affirmative Action' to the 'Director of Equal Opportunity for Women in the Workplace'.

Item 7 – Subsection 3(1) (definition of *employment matters*)

1.7 This item proposes to substitute a new definition of 'employment matters'. The new definition is somewhat wider than the definition it replaces but is not exhaustive. Employment matters include:

- the recruitment procedure, and selection criteria for appointment or engagement of persons as employees;
- the promotion, transfer and termination of employment of employees;
- training and development for employees;
- work organisation;
- conditions of service of employees;
- arrangements for dealing with sex-based harassment of women in the workplace.

1.8 Other provisions in the amended Act use the term 'employment matters', and it is principally in relation to these matters that the Act is intended to eliminate discrimination and promote equal opportunity.

Item 8 – Subsection 3(1)

1.9 This item proposes to insert a definition of 'equal opportunity for women in the workplace program'. The term 'workplace program' can be used in place of 'equal opportunity for women in the workplace program' (see item 10). An 'equal opportunity for women in the workplace program' is a program that is designed to ensure that, in relation to employment matters:

- appropriate action is taken to eliminate all forms of discrimination; and

- measures are taken to contribute to the achievement of equal opportunity.

1.10 The provision applies to all forms of discrimination that might occur in the employers' workplace. Discrimination may be direct, indirect or systematic. Workplace programs should be designed to ensure that appropriate action is taken to eliminate discrimination by the relevant employer against women in relation to employment matters in whatever form that discrimination takes in that workplace. Employer obligations in relation to a workplace program are discussed at Item 14.

Item 9 – Subsection 3(1) (definition of *operative day*)

1.11 This item would repeal the definition of 'operative day'. The Act originally came into force on a number of separate dates for different employers, depending on the size of the employer. The different operative dates are of no ongoing significance and the repeal of this definition will assist in simplifying the Act.

Item 10 – Subsection 3(1)

1.12 This item proposes to insert a new definition of 'workplace profile'. A workplace profile is factual information about the composition of an employers workforce. Workplace profiles are required to be prepared as part of the process of developing an equal opportunity for women in the workplace program (see item 15).

Item 11 – Subsection 3(1)

1.13 Item 11 would provide that the term 'workplace program' can be used in place of 'equal opportunity for women in the workplace program'.

Item 12 – Subsection 5(4)

1.14 The proposed amendment to subsection 5(4) is consequential on the repeal of 'affirmative action program' effected by item 3, and the inclusion of 'workplace program' in items 8 and 11.

Item 13 – Part II (heading)

1.15 This item would provide for the following new heading:

Part II–Equal opportunity for women in the workplace programs

Item 14 – Section 6

1.16 This item proposes to repeal section 6 and replace it with a simplified provision.

1.17 The new subsection 6(1) would set out which employers are required to develop and implement workplace programs as required by the Act. The section applies to 'relevant employers', a term that is defined in section 3 to mean a higher education institution that is an employer, or an employer of 100 of more employees in Australia, but so as not to include the Commonwealth, a State, a Territory or an authority. (Section 3 also provides that for the purposes of the Act, a corporation is taken to employ a person where the person is employed by a subsidiary of the first-mentioned corporation, and a trade union is taken to employ an elected official of the trade union.)

1.18 An employer who is a relevant employer on 1 January 2000, or becomes a relevant employer after 1 January 2000, will be required to develop and implement a workplace program.

1.19 Subsection 6(2) would provide that the Act will continue to apply to an employer when employee numbers fall below 100, unless or until employee numbers fall below 80. This subsection mirrors subsection 6(3) of the repealed provision and is designed to discourage employers from artificially manipulating employee numbers to avoid the obligations of the Act.

Item 15 – Sections 7 and 8

1.20 This item proposes to repeal section 7; and repeal and replace section 8.

1.21 Section 7 sets out the operative day for various employers. The Act originally came into force on a number of separate dates for different employers depending on the size of the employer. The different operative dates are of no ongoing significance and the repeal of this section will assist in simplifying the Act.

1.22 Section 8 of the earlier Act required employers to follow a prescriptive 'eight step' affirmative action program. This section has been repealed to allow employers a greater degree of flexibility and innovation in the way they achieve equal employment opportunity for women.

1.23 Subsection 8(1) would require the employer to develop a workplace program, based on a workplace profile prepared not more than six months before the start of the period to which the program relates. Employers will have the flexibility to decide whether profiles will be prepared in relation to a whole enterprise or separate workplaces.

1.24 While a workplace profile must contain factual information about the composition of an employer's workforce, the way in which information is collected may vary from one

workplace to the next based on different occupational and industrial characteristics. For example while some employers may collect data based on the Australian Standard Classification of Occupations, others may use internal, or industry based classifications that better reflect the particular characteristics of their workplace. Under the new requirements, any method of collection or presentation is allowable, so long as it allows for an adequate level of gender analysis thus allowing employers to identify the issues relating to employment matters that may exist at their workplace.

1.25 Subsection 8(2) would require an employer (after preparing the workplace profile) to analyse the issues relating to employment matters that would need to be addressed to achieve equal employment opportunity in the employer's workplace. This should allow employers to identify the priorities for action that are relevant to their workplace.

1.26 Subsection 8(3) would require a workplace program to provide for action to be taken in relation to the priority issues identified, and to evaluate the effectiveness of actions taken in achieving equal opportunity in the employers' workplace. Employers will have a choice as to whether they report publicly, or in confidence, on the effectiveness of action taken. The objective is for employers to take steps that are appropriate to address issues that have been identified as relevant to those workplaces. A workplace program may contain actions to address all the issues raised in their analysis, or may be selective in the issues that are included in the action plan. An employer with clear action plans in relation to all issues arising in their workplace would have a greater likelihood of having future reporting requirements waived than an employer who chose to deal with a more limited number of the issues (see item 21).

1.27 To allow maximum flexibility in relation to the content of the workplace programs, subsection 8(4) would provide that they may contain any provision that is consistent with the objects of the Act, and that the employer thinks fit to include. This approach is designed to promote ownership of programs by participating employers and allow flexibility in the way employers achieve equal opportunity for women.

1.28 Subsection 8(5) would require an employer to have a workplace program for each reporting period. It is anticipated that the requirement to prepare a workplace profile within 6 months of the beginning of a reporting period will mean that programs will be tailored to meet current issues in the employer' workplace that are identified by the profile and analysis. However, some priority issues may continue to be relevant across different reporting periods, so that an employer might reasonably decide to keep pursuing the same actions and to build on a workplace program that had shown itself to be effective in a earlier period.

Item 16 – Part III (heading)

1.29 Item 16 would repeal the heading of Part III and insert the following heading:

Part III–Equal Opportunity for Women in the Workplace Agency

Item 17 – Subsections 8A(1) and (2)

1.30 Section 8A establishes the Affirmative Action Agency and states what it consists of. Consistent with the name change to be effected by item 1 of Schedule 2 this item proposes to omit the words 'Affirmative Action' and substitute the words 'Equal Opportunity for Women in the Workplace' in both subsections. The heading to section 8A is also altered in the same manner.

Item 18 – Subsection 9(1)

1.31 Section 9 provides for the Director of Affirmative Action. Consistent with the name change to be effected by item 1 of Schedule 2 this item proposes to omit the words 'Affirmative Action' and substitute the words 'Equal Opportunity for Women in the Workplace'.

Item 19 – Paragraphs 10(1)(a) and (d)

1.32 Section 10 deals with the functions and powers of the Agency. This item proposes to omit the words 'affirmative action' and substitute the words 'workplace' in both subsections consequent on the change proposed by item 17.

Item 20 – Paragraphs 10(e), (f) and (h)

1.33 Consistent with the emphasis in the amended act on equal opportunity, this item proposes to omit the words 'affirmative action to achieve equal employment opportunity for women' and substitute the words 'equal opportunity for women in the workplace' in each subsection.

Item 21 – Sections 13, 13A and 14

1.34 This item proposes to repeal sections 13, 13A and 14 and insert new sections 13, 13A, 13B, 13C and 14 which provide requirements relating to the obligation to report.

1.35 The existing section 13 details the public reporting requirements, and provides when and how frequently a relevant employer is to report. The section also provides that the report must contain statistical information concerning employment by the relevant employer, and must outline the processes undertaken by the relevant employer to develop and implement, or further develop and implement, an affirmative action program.

1.36 Existing section 13A provides that the Agency may waive certain reporting requirements where the employer's programs meets the requirements of section 8(1) and the

employer has complied for the last 3 years.

1.37 The existing section 14 details the confidential reporting requirements. This requirement does not apply where the relevant employer's public report provides the detailed analysis required in section 14(2). The new sections maintain the division between the public and confidential reporting requirements but are considerably simpler than the earlier provisions as reporting periods for all employers have been standardised.

1.38 New subsection 13(1) requires a relevant employer to lodge a written report with the Agency that is about the outcomes of a workplace program. This reflects the emphasis in the amended Act on outcomes, rather than processes.

1.39 New subsection 13(2) provides that a public report must:

- set out the workplace profile;
- describe the employer's analysis of issues in their workplace;
- describe the action taken to address priority issues; and
- describe the actions that the employer plans to take in the next reporting period to address issues at the workplace.

1.40 Subsection 13(3) provides that a public report may also contain an evaluation of the effectiveness of the employer's actions. Where this is not contained in the public report, it must be provided in a confidential report submitted under section 14.

1.41 The new section 13A streamlines the time at which reports are required under the amended Act. A public report is required for the 12 month period commencing 1 April 2000, and for the 2 year period commencing 1 April 2001, and then in respect of every consecutive 2 year period after that. Under subsection 13A(4), if an employer has only been a relevant employer for less that six months in respect of any reporting period, the employer is exempted from having to report on that period.

1.42 The new section 13B provides that a relevant employer must lodge a report within two months after the period to which the report relates, unless the employer has received an extension of time under section 17. The effect of this provision is that reports from relevant employers will fall due on 31 May 2001, and on 31 May 2003, and every 2 years thereafter (unless an extension or waiver is granted).

1.43 New section 13C alters the requirements for the granting of waivers. Under subsection 13C(1), waivers may be granted where a relevant employer applies in writing for the waiver or at the initiative of the Agency.

1.44 A waiver from the reporting requirements can be only be given if the Agency is satisfied that the relevant employer has taken all reasonably practicable measures to address the issues relating to employment matters that affect equal opportunity for women in relation to the employer's workplace. The intention is that the Agency will use the granting of waivers as a way to encourage employers to produce good quality workplace programs that provide effective action plans to eliminate discrimination and achieve equal opportunity in the workplace. The standard adopted in subsection 13C(2) allows the particular characteristics and circumstances of an employer to be taken into account when determining whether that employer should be seen to have taken all reasonably practicable measures to address the issues in relation to the employment matters in the employer's workplace.

1.45 Subsections 13C(3) and 13C(5) provide that the regulations may prescribe matters that the Agency must take into account in determining whether it is satisfied that a relevant employer has taken all reasonably practicable measures. There is no requirement for regulations to be made before a waiver can be issued, however, if regulations are in place the Agency is required to have regard to them.

1.46 New subsection 13C(4) ensures that waivers will be in writing and will specify the period they will operate for.

1.47 The new section 14 requires a relevant employer to lodge a confidential report if the employer did not include an evaluation of the effectiveness of the actions taken in achieving equal opportunity in their public report. Information contained in the confidential part of a report is protected from disclosure by section 32 of the Act. Under subsection 14(3) a confidential report must be in writing and be lodged within the same period the public report is to be lodged.

Item 22 – Subsection 17(1)

1.48 Section 17 deals with the granting of extensions to the period within which a relevant employer is to lodge a report. The section refers to public reports lodged under subsection 13(2). This item proposes a consequential change to ensure that cross-the reference to the public reports is accurate.

Item 23 – Section 18

1.49 This item proposes to repeal section 18 and substitute new section 18 which allows the Agency to seek further information, by notice in writing, from an employer that has lodged a report. The current section 18 enables the Agency to request further information where, in its opinion, the public or confidential report of a relevant employer does not comply with the content requirement for reports. The new provision extends the facilitative rather than punitive intention of the Act in that it does not require the Agency to find non-

compliance before further information can be requested. This will assist employers to comply with the Act and avoid the sanctions associated with non-compliance. The Agency would be able to seek information on any aspect of:

- the employer's workplace program;
- the preparation of the report; or
- the report itself.

Item 24 – Part V (heading)

1.50 Item 24 proposes to repeal the heading of Part V and insert the following heading:

Part V—Director of Equal Opportunity for Women in the Workplace

Item 25 – Subsection 31(1)

1.51 This item would omit the words 'affirmative action' and substitute the word 'workplace'.

Item 26 – Paragraphs 31(3)(e) and 33(5)(a)

1.52 Item 26 would omit the words 'affirmative action' and substitute the word 'workplace'.

PART 2 – AMENDMENT OF THE EQUAL EMPLOYMENT OPPORTUNITY (COMMONWEALTH AUTHORITIES) ACT 1987

Item 27 – Subsection 3(1) (paragraph (b) of the definition of *authority*)

1.53 Consistent with the name change to be affected by item 1 of Schedule 2, this item proposes to alter the name of the Act as it appears in the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*.

SCHEDULE 2 – THE SHORT TITLE OF THE AFFIRMATIVE ACTION (EQUAL EMPLOYMENT OPPORTUNITY FOR WOMEN) ACT 1986

Affirmative Action (Equal Employment Opportunity for Women) Act 1986

Item 1 – Section 1

2.1 Item 1 would amend the short title of the *Affirmative Action (Equal Opportunity for Women) Amendment Act 1986* by omitting that short title and substituting the new short title *Equal Opportunity for Women in the Workplace Act 1999*.

SCHEDULE 3 – TRANSITIONAL

Item 1 – Definitions

3.1 This item would provide the interpretation of terms used in the transitional provisions.

Item 2 – Continuity of Agency and Director not affected

3.2 This item would provide that the Agency's existence and the Director's appointment are not affected by amendments to the Agency's name or the Director's title or by any other amendment made by Schedules 1 or 2.

Item 3 – Waiver of reporting obligations

3.3 This item would provide that any waiver granted under current section 13A of the Act as in force immediately before 1 January 2000, would continue in force as if it were issued under the proposed section 13C of the amended Act.