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Australia: An Act to require certain Commonwealth authorities to promote equal opportunity in employment for women and persons in designated groups and for related purposes

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Australia

**Equal Employment Opportunity (Commonwealth Authorities) Act
1987**

No. 20 of 1987

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An Act to require certain Commonwealth authorities to promote equal opportunity in employment for women and persons in designated groups and for related purposes

(Assented to 18 May 1987)

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I-PRELIMINARY

Short title

1. This Act may be cited as the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears:

"Australia" includes the Territories to which this Act extends;

"authority" means a Commonwealth authority as defined in paragraph (a), (b) or (c) of the definition of "Commonwealth authority" in subsection 7 (1) of the *Public Service Act 1922*, other than:

(a) a Commonwealth authority in relation to which section 22B of the *Public Service Act 1922* applies;

(b) a relevant employer as defined in section 3 of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*;

(c) the Australian Dairy Corporation;

(d) the Australian Meat and Live-stock Corporation;

(e) the Australian Wheat Board; and

(f) the Australian Wool Corporation;

"Board" means the Public Service Board;

"designated group" has the same meaning as in the *Public Service Act 1922*;

"discrimination" means:

(a) discrimination that is unlawful under the *Racial Discrimination Act 1975* or the *Sex Discrimination Act 1984*; or

(b) discrimination by which a person with a physical or mental disability is, because of the disability, treated less favourably than a person without the disability;

"employee" means a natural person appointed or engaged:

(a) under a contract of service, whether on a **full-time, part** time, casual or temporary basis; or

(b) under a contract for services;

"employment matters" includes:

(a) recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;

(b) promotion and transfer of employees;

(c) training and staff development for employees; and

(d) conditions of service of employees;

"operative day", in relation to an authority, means the day specified in relation to that authority in subsection 5 (2);

"overseas" means outside Australia;

"program", in relation to a relevant authority, means an equal employment opportunity program designed to ensure that appropriate 40 action is taken by the authority:

(a) to eliminate discrimination by it against; and

(b) to promote equal opportunity for women and persons in designated groups in relation to employment matters;

"relevant authority" means an authority that employs employment in Australia;

"responsible Minister" in respect of a relevant authority, means the Minister administering the law by or under which the authority established or another Minister acting for and on behalf of that Minister;

"trade union" means:

(a) an organisation of employees registered pursuant to the Conciliation and Arbitration Act 1904; or

(b) a trade union within the meaning of a State Act or law of a Territory;

"woman" means a member of the female sex irrespective of age.

(2) A reference to discrimination in relation to employment matters does not include a reference to discrimination that:

(a) is essential for the effective performance of the duties to which the employment matters related and

(b) is not unlawful under the *Racial Discrimination Act 1975* or the *Sex Discrimination Act 1984*.

(3) For the purposes of this Act, an authority employs an employee in Australia if the contract, by which the employee is appointed or engaged, is made in Australia, notwithstanding that the employee may perform duties overseas.

(4) Nothing in this Act shall be taken to require any action incompatible with the principle that employment matters should be dealt with on the basis of merit.

Extension to certain external Territories

4. (1) This Act extends to the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

(2) If, and so long as, the regulations so prescribe, this Act extends to Norfolk Island.

PART II-PROGRAMS

Relevant authorities required to develop etc. programs

5. (1) A relevant authority shall commence the development and implementation of a program on the operative day.

(2) The operative day is:

(a) in relation to an authority that is a relevant authority on 1 July 1987 or such later day as is prescribed-that day or that later day; and

(b) in any other case-the day on which an authority becomes a relevant authority.

(3) A reference in paragraph (2) (b) to an authority becoming a relevant authority on a particular day includes a reference to an authority that comes into existence on that day.

(4) Where, at any time, an authority ceases to be a relevant authority because the number of employees employed by it in Australia falls below 30, this Act continues to apply to the authority as if the authority was a relevant authority unless and until the number of employees employed by it

in Australia falls below 30.

Contents of program

6. Without limiting the generality of the definition of "program" in subsection 3 (1), the program of a relevant authority shall provide for action to be taken:

(a) to inform employees of the contents of the program and of the results of any monitoring and evaluation of the program under 20 paragraph (h);

(b) to confer responsibility for the development and implementation of the program (including a continuous review of the program), on a person or persons having sufficient authority and status within the management of the relevant authority to enable the person or 25 persons properly to develop and implement the program;

(c) to consult with each trade union having members affected by the proposal for the development and implementation of the program in accordance with this Act;

(d) to consult with employees of the relevant authority, particularly 30 employees who are women or persons in designated groups;

(e) for the collection and recording of statistics and related information concerning employment by the relevant authority. including the number of, and the types of jobs undertaken by, or job classifications of:

(i) employees of either sex, and

(ii) persons in designated groups;

(f) to consider policies, and examine practices, of the relevant authority, in relation to employment matters to identify:

(i) any policies or practices that discriminate against women or 40 persons in designated groups; and

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

(g) to set:

(i) the particular objectives to be achieved by the program; and

(ii) the quantitative and other indicators against which the effectiveness of the program is to be assessed;

(h) to monitor and evaluate the implementation of the program and:

(i) to assess the achievement of those objectives, and

(ii) to assess the effectiveness of the program by comparing statistics and information collected and recorded under paragraph (c) with the indicators against which the effectiveness of the program is to be assessed.

Regard to be had to program

7. A relevant authority shall take any action necessary to give effect to its program and any person who exercises powers in relation to employment matters in the authority shall have regard to the program in exercising those 15 powers.

PART III-REPORTS BY RELEVANT AUTHORITIES

Election as to lodgment

8. (1) Subject to subsections (2) and (3), a relevant authority may elect to lodge reports prepared under this Part with either the responsible Minister or the Public Service Board.

(2) A relevant authority shall:

(a) within 3 months after the operative day, by notice in writing given to the responsible Minister, inform that Minister; and

(b) where the authority elects to lodge with the Board-also inform the Board, of the election made under subsection (1).

(3) Where a relevant authority fails to give notice as required by subsection the authority is deemed to have elected to lodge reports with the Board.

(4) A relevant authority may, at any time, change the election made by it under this section and shall immediately, by notice in writing given to the responsible Minister and to the Board, inform them of the change of election.

(5) The responsible Minister in respect of a relevant authority shall, upon receipt of a notice under this section, inform the Minister of the election or change of election made under this section.

Annual program report

9. (1) A relevant authority shall:

(a) prepare a report (in this section called a "program report") on the development and implementation of its program during each period of 12 months commencing on the operative day in relation to the authority or the anniversary of that day; and

(b) lodge the report with the responsible Minister or the Board, as the case may be, within 3 months after the end of the period to which the report relates.

(2) A program report shall provide, in respect of the period to which it

(a) a detailed analysis of the action taken by the relevant authority to develop and implement its program;

(b) the assessments referred to in paragraph 6 (h); and

(c) particulars of each direction given by the Minister under section 12. 15

(3) Where a relevant authority has lodged a program report with the responsible Minister, that Minister:

(a) shall, if the report fails to satisfy the requirements of this Act, by notice in writing, request the authority to lodge a further report, within such period as is specified in the notice; and

(b) shall, if the report or further report, as the case may be, satisfies the requirements of this Act. cause a copy of the report or further report to be laid before each House of the Parliament within 15

sitting days of that House after the day on which that Minister receives the report or further report.

(4) Notwithstanding any other provision of this section, where a relevant authority:

(a) has elected to lodge reports with the responsible Minister; and

(b) is required, by an Act other than this Act, to prepare an annual report which is to be presented to the Parliament;

the authority may, with the consent of that Minister, include a program report in the annual report if the annual report is lodged with that Minister within 3 months after the end of the period to which the program report relates.

(5) Where an authority ceases to be a relevant authority, this section 35 continues to apply, in relation to the final period, as if.

(a) references to the relevant authority were references to the authority; and

(b) a reference to a period of 12 months were a reference to the final period.

(6) In subsection (5), "final period" means the period beginning on the last anniversary of the operative day before the day on which the authority ceased to be a relevant authority and ending on that day.

Special report upon request

10. (1) The responsible Minister or the Board, as the case may be, with whom a relevant authority has elected to lodge reports may, by notice in writing to the authority, require it to give that Minister or the Board, as the case may be, a special report within the time specified in the notice.

(2) In, this section, "special report" means a report in writing (other than a report under section 9) in relation to the development, implementation or review of the program of the authority.

(3) A notice under sub-section (1) may specify the particular aspects of the program of the authority that are to be dealt with in the special report.

(4) Where a relevant authority has lodged a special report with the responsible Minister, that Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

Minister or Board may make recommendations

11. (1) The responsible Minister or the Board, as the case may be, with whom a report is lodged under this Part may, after considering the report, make a recommendation in writing to the authority lodging the report on the action to be taken by the authority to improve the effectiveness of its program.

(2) If the authority does not concur in or adopt a recommendation made under subsection (1), the authority shall, within a reasonable time:

(a) inform the responsible Minister, in writing, of its reasons for not concurring in or adopting the recommendation; and

(b) if the recommendation was made by the Board-give a statement of those reasons to the Board.

PART IV-MISCELLANEOUS

Directions by Minister

12. (1) The responsible Minister in respect of a relevant authority who has elected to lodge reports with that Minister may, in writing, give general directions to the authority with respect to the performance of its obligations 35 under this Act.

(2) Where, under an Act other than this Act, a relevant authority submits a corporate plan to its responsible Minister, that Minister may have regard to that authority's obligations under this Act and, if that Minister considers that the corporate plan should be revised for the purposes of giving effect to those obligations, shall direct the authority in writing to revise the corporate plan accordingly

(3) For the purposes of subsection (2), "corporate plan" means a plan, however described, prepared by the relevant authority defining the principal objectives of the authority and outlining the policies or strategies to be pursued by the authority in achieving those objectives.

Board may Issue guidelines

13. The Board may from time to time, by notice in writing to the relevant authorities who have elected to lodge reports with the Board, issue guidelines on the provisions to be made by, and the development, 10 implementation and review of programs for those authorities.

Report to Prime Minister by Board

14. The Board shall, in a report furnished to the Prime Minister under section 22 of the *Public Service Act 1922*, report on the operation of the provisions of this Act to the extent that they relate to the Board.

Regulations

15. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Minister's second reading speech made in House of Representatives on 19 March 1987

Senate on 30 March 1987]