Unfinished Business: Employment Equality in Australia

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Discrimination by race and gender has been a major feature of Australian history since European settlement in 1788. The period until the 1970s was characterised by overt discrimination on the grounds of gender and race with discriminatory policies affecting the employment of women, Aborigines and non-European migrants. Agitation for changes grew in the 1960s with lobbying from a variety of groups within the community including burgeoning women's groups, trade unions, and groups pursuing changes on racial issues. Changes in legislation and policies began to be achieved in the late 1960s, with equal pay awards on the basis of gender and race and the removal of some discriminatory employment practices such as the 'marriage bar', which prevented married women from retaining permanent employment in public services and areas of private employment. Beginning in 1975, anti-discrimination legislation was introduced on the grounds of race and sex. In the following decade affirmative action legislation required large employers to take a more pro-active stance on examining discrimination against women within their organisation and instituting a program which would assist in the achievement of equal employment opportunity.

At the beginning of the twenty-first century in Australia there is public recognition of women's and all ethnic groups' rights to work and not be subjected to discriminatory practices. The outcomes from these policies, however, are not so clear cut. Women and Aborigines (1.5 per cent of the population) earn less than white men and Aborigines have a significantly higher unemployment rate. Women form the majority of temporary and part-time workers. In an increasingly decentralised industrial relations system which emphasises collective bargaining at the workplace, regulations for minimum working standards are being reduced. Thus, despite continuing anti-discrimination and affirmative action policies, the labour market is becoming increasingly insecure for more of the workforce. Yet security in employment and minimum standards are crucial for the achievement of employment equity. This chapter discusses the evolution of policies designed to achieve equal opportunity in employment. It concentrates on policies which affect women and Aborigines.

AUSTRALIAN SOCIETY AND DISCRIMINATION

The first European settlers arrived in 1788 to establish a British penal colony of convicts and jailers. Mass migration from Europe in the nineteenth century created the twentieth century nation of Australia. One and a half million immigrants arrived from Europe, principally from the United Kingdom, between 1821 and 1900 (Haines and Shlomowitz, 1992). Migration from 1879 to 1910 increased Australia's labour force by 42 percent, third in the New World behind Argentina (86 percent) and Canada (44 percent) (Hatton and Williamson, 1998: 208). In the twentieth century the largest wave of immigrants came from Europe after World War II until the 1960s. Immigration in Australia was closely tied to labour market needs with migrant men and women the major source of workforce growth in the post war period (Collins, 1991:12). Today 15 per cent of the population report that they speak a language other than English at home (ABS, 1996).

The overwhelming majority of immigrants have been British and Irish, followed by settlers from other European countries. This has been part of a deliberate policy, enshrined in legislation in the *Immigration Protection Act 1901* and known as the White Australia Policy (Collins, 1991: 204-207). This official racial discrimination was not removed until the 1970s when the policies of multiculturalism emerged: 'Distinctive migrant cultural trappings...were to be celebrated and encouraged as multicultural enlightenment and diversity replaced assimilationist homogeneity' (Collins, 1991: 231). Today 25 per cent of the labour force was born outside Australia (ABS, 1999b).

In the 1990s the indigenous population of Australia numbered approximately 265,000 or 1.5 per cent of the total population of 19 million (ABS, 1997b: 125). Discrimination by race has been a major feature of Australian history since European settlement. The period until the 1970s was characterised by overt discrimination on the grounds of race against the Aboriginal population. In the nineteenth century there were acts of genocide against the Aboriginal population and periods of open conflict now referred to as 'race wars' (Evans, 1975). At the time of European settlement the indigenous population practised a hunter gatherer economy (Dingle, 1988) and the Aboriginal people were judged by the British Government to have no prior claim on the land (Kociumbas, 1992: 135; McGrath and Stevenson, 1996: 41). No treaties were made with the Aborigines and the doctrine of *terra nullius* was maintained legally until 1992. Indeed, it was not until 1967 that a referendum enabled a change to the constitution that allowed full-blood Aborigines to be counted in the census.

Until the late 1960s Aborigines were the subject of unequal wage decisions. Aboriginal workers were left largely outside mainstream industrial relations, despite the fact that Aboriginal labour was significant in the pastoral industry in northern Australia. Unequal pay was a feature of the industry (see Table 1).

Table 1: Aboriginal wages compared to wages for white workers.

	Aboriginal General Station Hand weekly wages with keep	General Station Hand weekly wages with keep
1926	£2 (66%)	£3
1945	£1 10s (45%)	£3 7s
1964	£10 12s (70%)	£15 3s 6d

Source: Hagan, Castle and Clothier, 1998: 413.

In 1999 there were over 9 million people in the work force, 43 per cent female. Women's labour force participation rates increased from 22 per cent in 1947 to 37 per cent in 1967, to 44 per cent in 1983, and to 54 per cent in 1999. Since 1983 male participation rates have declined from 83 per cent to 73 per cent (ABS, 1999b; Department of Prime Minister and Cabinet, 1984: 18; Burgess and Strachan, 1998). Historically Australia's labour market was highly segregated by gender and characterised by overt discrimination policies such as the 'marriage bar' which meant that women, once they married, could not retain their jobs in public services or with many private employers. For the first seventy years of the twentieth century between 55 per cent and 75 per cent of women were employed in occupations where more than half of the workers were women (Power, 1975). Although the most common women's

occupations have changed, a high level of segregation remains. In May 1996 56 percent of all women workers were employed in two occupational classifications: clerical, and salespersons and personal service workers (ABS, 1997a: 73).

Until the 1970s the dominant concept in wage fixation was the living or family wage, that is, a wage sufficient for a male worker to maintain himself, his wife and three children 'as a human being living in a civilized society' (CCCA, 1907: 1-19; Hutson, 1971: 4). The consequence of this decision was to entrench a lower wage rate for the overwhelming majority of women workers (who were judged not to have responsibility for dependents) of approximately 54 per cent of the male wage. This remained until the labour market disruptions of the Second World War caused a revision of women's pay rates which were generally adjusted to 75 per cent of the male rate (Strachan, 1996; Ryan and Conlon, 1989).

These wage determinations occurred within the Australian industrial relations system which, for most of the twentieth century, can be characterised as a centralised system. While it has endured many changes, the essential framework of permanent tribunals setting industry wide awards of minimum conditions, which applied to all workers in the specified job category and industry, survived from 1904 until the early 1990s. Awards were comprehensive documents covering a wide range of employment matters including minimum rates of pay, leave entitlements, overtime and shift rates, hours of work, meal breaks, travelling allowances and much more, and stipulated whether employment was on a weekly, daily, permanent or casual basis (Deery, Plowman and Walsh, 1997: 9.23). Australian governments have been loath to legislate minimum labour standards and the award system has acted to establish a floor of minimum labour standards underpinning the conditions of employees. Therefore award regulation has acted as a system of protection for individual employees against the untrammelled operations of the free market, supplementing the much more partial protection offered by individual trade unions. This system changed in the 1990s to emphasise collective bargaining at the workplace and reduced protection for workers (Strachan and Burgess, 2000).

AN OVERVIEW OF LEGISLATION AND POLICIES WHICH PROMOTE EQUALITY

Major changes have occurred since the late 1960s that have resulted in successful equal pay cases, legislation and policies designed to promote equal employment opportunity (EEO). This has been tackled in several ways in Australia. An overt inequality was unequal pay which was explicitly offered to the majority of women workers and Aboriginal workers. From the late 1960s successful equal pay cases were processed through the industrial relations system. From the 1980s discussion about women's wages has widened to encompass a broader understanding of equal pay. Anti-discrimination legislation has been enacted at the federal level and in all states, beginning in 1975. This legislation seeks to redress essentially individual cases of discrimination after they have occurred and covers complaints on grounds such as sex, race, ethnicity, religion, family status, sexuality, and disability.

A second type of legislation has been labelled affirmative action in Australia. Australia has developed unique legislation using the term affirmative action but creating a system which is different to that in North America. The major piece of legislation, the

Affirmative Action (Equal Opportunity for Women) Act 1986, relates to women, however, three other groups have been added in some public sector legislation (Aborigines and Torres Strait Islanders, migrants from non-English speaking backgrounds, and people with disabilities). In Australia affirmative action was defined as 'a systematic approach to the identification and elimination of the institutional barriers' faced by women in employment, and an affirmative action program was 'a planned, results-oriented, management program designed to achieve Equal Employment Opportunity'. EEO 'rests on a commitment by an employer to ensure that all personnel activities are conducted in a manner which provides fair and equal treatment and equal opportunity for all people' (Public Service Board EEO Bureau, 1984: 5). Affirmative Action legislation also relies on the underlying principle of bringing women up to equality with men. This has been called an inclusionary or incorporation model as affirmative action programs concentrate on training for women and the integration of women into non-traditional areas, indeed it treats women as the problem and endeavours to fix this (Bacchi, 1996: 84).

There are several philosophies that underlie policies and legislation designed to promote gender and race equity. In the majority of cases the underlying principle is to make women in the workforce equal to men (white European men) or Aborigines equal to Europeans, women's pay equal to men's, and so on. The legislation focuses on remedying discrimination on the basis that women have been discriminated against in relation to a comparator, that is men, and this applies to both equal pay decisions and anti-discrimination legislation. It also applies to Australia's notion of affirmative action.

A major criticism of this type of legislation has been that it tries to make women equal to men and Aborigines equal to white men. Indeed, affirmative action in Australia 'is theoretically victim-centred rather than perpetrator-centred in that it is designed to take account of the structural factors which constitute barriers for women and minorities' (Thornton, 1990: 242). It does not try to change the *status quo* which is a European male working life pattern of the post World War II era. Under this model the world of work does not change. As Thornton (1995: 8) notes, 'the legislative endeavours carefully cordon off the domestic sphere from scrutiny'. More recent debate has questioned this public-private divide and noted the importance of altering the world of work to accommodate the demands of the home. In Australia in the 1990s a new raft of policies have been discussed under the term of work and family policies. This philosophy also extends to the change from maternity leave to parental leave. Yet there are two problems here: first, many workers cannot access these conditions, and secondly, they are used overwhemingly by women and seen as policies for women. As discussed in a later section of this chapter, these policies have made little impact on conditions of work in the face of longer hours for full-time workers, increased use of temporary workers and extended working hours.

EQUAL PAY

In Australia, along with Canada and USA, equal pay laws preceded feminist mobilisation, suggesting that 'the primary focus was on moving women into the labour force' as there was 'a labour shortage which women were invited to end' (Bacchi, 1996: 80). Against the backdrop of increasing female labour market participation in the 1960s,

plus the emerging recognition of race and sex discrimination, the peak trade union organisation, the Australian Council of Trade Unions (ACTU), initiated and led a successful equal pay case in the federal Conciliation and Arbitration Commission in 1969. Support came from organisations such as the Australian Federation of Business and Professional Women's Clubs, the National Council of Women, the Australian Federation of Women Voters and the Union of Australian Women, who expressed their views at the hearings (Lake, 1999: 218).

The 1969 decision had limited coverage of women workers as it contained a provision that equal pay would not be awarded 'where the work in question is essentially or usually performed by females but is work upon which male employees may also be employed'. As a result of gender segregation a mere 18 per cent of female employees benefited from this decision (O'Donnell and Hall, 1988: 54). But through this decision, Lake (1999: 218) argues, 'feminists secured, after decades of struggle, an important symbolic victory'.

The equal pay case of December 1972 broadened the concept and removed the 'essentially or usually performed' restriction and awarded female workers 'equal pay for work of equal value'. The potential coverage of this judgement was estimated to be one and a half million female workers (out of 1,795,000 women in the workforce) (Ryan and Conlon, 1989: 162). The cases set out principles that were to be followed by unions when applying to have equal pay implemented in their awards. Therefore after 1972 the pursuit of equal pay occurred on an *ad hoc* basis, relying on individual trade unions to institute cases on behalf of their membership. Generally, employers and unions merely agreed on the integration of male and female classifications without any quasi-scientific studies of work valuation and comparison, such as job evaluation (Short, 1986: 325). Despite the case by case implementation of equal pay, Australia's female to male earnings ratio increased faster in the 1970s than that of any other country, from around 0.60 to 0.80 in six years (Burgess et al, 1998).

Aboriginal Employment Conditions

By the late 1950s wages and working conditions of Aborigines were beginning to attract the attention of multinational bodies and organisations of Aboriginal and white people. Regulations fixing station hands' wages were of special interest to many non-Aboriginal groups. Towards the end of the decade the establishment of the Federal Council for Aboriginal Advancement (FCAA) provided unity and a national forum for state and other groups working for the integration of Aborigines into society, which also attracted the support of trade unions. FCAA affiliated unions were among those sponsoring motions for equal pay and removal of all forms of discrimination at the 1959 and 1961 ACTU Congresses. The 1963 ACTU Congress adopted a broad policy statement on Aborigines based on the view that there must be an end to wage discrimination (Markus, 1978: 155; Evans, 1966: 216-217).

In 1965 the ACTU took a more proactive role by supporting industrial action and giving assistance to trade union applications for the removal of discriminatory provisions from awards covering the pastoral industry. The result of this case was that in March 1966 the Commonwealth Arbitration Commission handed down a judgment establishing the principle of equality for Aboriginal workers (Kidd, 1997: 236; Markus, 1978: 155-156; Evans, 1966: 217-218).

Comparable Worth

In the 1980s, the women's movement and ACTU pushed for a case along comparable worth lines as such cases had been successful in some employment sectors in USA. In 1986 the ACTU submitted a claim in relation to nurses' salaries along comparable worth lines. The commission decided that acceptance of any version of comparable worth would 'strike at the heart of long accepted methods of wage fixation in this country' (ACAC, 1986) and refused to accept the general nature of the claim for reviewing women's wages. The nurses' claim was processed as an individual case and the commission ensured that it had no ramifications for women's wages generally (Rafferty, 1994: 467). To this day there has been no definition of the terms, no agreed method of evaluation and any implementation must be on a case by case basis. The historical undervaluing of women's work (for example Strachan, 1996) which has been perpetrated largely because of the high level of gender segregation of jobs has not been adequately addressed. Indeed, 'work value has been assessed for changes over time but never for comparative work value with men to see if the original rate was discriminatory' (Short, 1986: 329).

Equal Pay in the 1990s

In the 1990s requirements for equal pay for work of equal value have been inserted in the federal industrial relations acts. Section 170B of the *Workplace Relations Act 1996* allows the commission to make orders for equal remuneration for work of equal value between men and women, with the Act relying on the 1951 ILO Equal Remuneration Recommendation for any interpretation of equal value. Once again, however, in the most recent case, there has been no definition of the terms, no agreed method of evaluation and any implementation must be on a case by case basis (AIRC, 1998).

The last years of the twentieth century show some signs for concern over women's wages. Progress in women's wages is measured generally in comparison with men's wages, so changes in men's wages can have an impact on this comparative figure. Analysis of wage trends shows that relatively women do not appear to be doing worse under the increasingly decentralised industrial relations arrangements because lower paid men are doing worse (Whitehouse and Zetlin, 1999).

Yet there have been moves to examine the historical undervaluing of women's work. In one Australian state, New South Wales, a Labor Government was elected in 1995 with an expressed commitment to pay equity for women. It established a tripartite taskforce in 1996 to look at pay equity issues and the Pay Equity Inquiry began the following year. Comparisons were made between childcare workers and metal trades workers, hairdressers and beauty therapists and motor mechanics, and other occupational groups. The inquiry found that the work performed by women was undervalued historically and that new equal remuneration principles needed to be developed (New South Wales Pay Equity Taskforce, 1996). New wage fixing principles were adopted in June 2000 and the crux of these is that 'the assessment of the work, skill and responsibility...is to be approached on a gender neutral basis and in the absence of assumptions based on gender' (NSWIRC, 2000). Other states are beginning

to hold similar inquiries. While no wage rates have yet been adjusted, the prospect of change is there.

ANTI-DISCRIMINATION LEGISLATION

In 1973 the federal Labor Government ratified ILO Convention 111 which required a commitment to remove discrimination from employment on the basis of race, colour, sex, political opinion, national extraction or social origin. The Government believed this action testified to its determination to remove discrimination in employment, not just by removing cases of blatant discrimination, but also by taking positive action to promote real equality of opportunity in employment (Cameron, 1973:3). The Government's position was fully supported by business, the ACTU and the state governments. Subsequently, the first federal anti-discrimination law, the *Racial Discrimination Act 1975* (RDA) was enacted, making it 'unlawful to take "certain actions" by reason of race, colour or national or ethnic origin of a person or a relative or associate of that person' (Ronalds, 1987:194). The federal Government intended to use the framework of the RDA to make discrimination on the grounds of sex unlawful. However, before the Bill was introduced into Parliament the conservative Liberal/National Party Coalition Government came to power in November 1975. It took another nine years and a Labor Party victory before this legislation was passed. In this period the states which had Labor Party Governments enacted anti-discrimination legislation through which complaints could be taken on grounds such as sex, race, ethnic origin, religion and physical disability.

In the years between 1975 and 1984 there were ongoing activities by various parties towards the ultimate achievement of anti-discrimination legislation on the grounds of sex at a federal level. The 1977 Royal Commission on Human Relationships' review of the position of women in Australia found a need for comprehensive nation-wide legislation against discrimination on the grounds of sex and marital status in employment and other areas (Royal Commission on Human Relationships, 1977:60-61). As a result of an extensive review of its employment practices, the federal Public Service Board established an Equal Employment Opportunity Bureau in 1975. This unit was the first of its kind in Australia and was responsible for the implementation and co-ordination of a number of EEO programs for women, migrants, Aboriginals and disabled persons in the Commonwealth Public Service (Dredge and Conway, 1980:4). The ACTU established the Working Women's Centre in 1975 with staff devoted to securing the same rights, pay and working conditions for women as were enjoyed by men. In 1978 the Federal Government established the National Women's Advisory Council which offered advice to the Government on a range of policy matters of special importance to women (Ellicott, 1980) and set up employment discrimination committees, which operated in each State, although these had no power to enforce compliance with any recommendations (Gaudron, 1982:108). Outside the public sector, the Women's Electoral Lobby formulated its law reform agenda which had anti-discrimination measures as a high priority (Ryan, 1997:46).

While there was much support for these views, not all sections of society were in favour of the moves. Feelings towards women in the workplace, particularly married

women, varied. Some newspaper articles suggested that women were taking the jobs of young people, leaving them unemployed. With the headline 'If mum quit work, there'd be jobs for the boys (and girls)', one article commenced with the view that 'The first reason why the school-leaver is unable to get a job is his teacher. The second is his mother – she has already taken the job' (Weekend Australian, 1978). Further arguments against women in the workplace were that the family unit would be affected with a rise in divorce rates due to inadequate child care facilities and inflexible work hours. Women also became less dependent on spouses and more independent which was said to increase the divorce rate (National Times, 1 September 1979; National Times, 25 August 1979). Despite these contrary views, by 1980 equal pay had been implemented for many women, and race and sex discrimination had been legislated against in a number of states.

In 1983 the newly elected federal Labor Government asserted that women were disadvantaged in the workplace compared to their male counterparts: women were concentrated in a relatively narrow range of occupations and industries, at the lower end of the hierarchy, in positions with lower status and lower pay and with limited career prospects. In addition, there were far more women than men in part-time employment and in less secure jobs (Department of Prime Minister and Cabinet, 1984: 10; Ronalds, 1987: 1-7). The Government moved swiftly to enact the *Sex Discrimination Act 1984*. The Act makes it unlawful to discriminate on the grounds of sex, marital status or pregnancy in the areas of employment, education, accommodation, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs. The Act also makes unlawful discrimination involving sexual harassment in education and employment. Sex discrimination legislation provides an avenue for the redress of individual and group complaints of unlawful discrimination.

The *Sex Discrimination Act 1984* recognises structural or indirect discrimination which 'arises from the fact that organisational norms, rules and procedures, used to determine the allocation of positions and benefits, have generally been designed...around the behaviour patterns of the historically dominant group in public life (Anglo-Australian, able-bodied, heterosexual males)' (Hunter 1992: 5; see also Department of the Prime Minister and Cabinet, 1984: 12-13). Groups of women have been able to pursue remedies after an alleged case of discrimination and a number of major cases have been conducted by trade unions. In the first instance, anti-discrimination board staff and the parties to the case attempt to reach a solution through conciliation. The overwhelming majority of cases are settled at this stage with a minority proceeding to a public legal hearing. While important in resolving some instances of discrimination, framing a case that meets the terms of the legislation can be difficult (Scutt, 1990: 76). Nevertheless the legislation marked government recognition of the equal rights of women in society and it established public acknowledgement that society would no longer accept women as second class citizens thereby denying them access to many benefits only available to men (Department of Prime Minister and Cabinet, 1984: 13).

Complaints are still being received under the various anti-discrimination acts. In 1998-99, 1780 complaints were received under Federal anti-discrimination legislation, an increase of 17 percent over the previous year.[1] Forty four percent of the complaints were on the basis of race, 29 percent on the basis of disability and 19 percent

on the basis of sex. Four hundred and thirty four complaints were received under the *Sex Discrimination Act 1984.* Of these 39 percent were withdrawn. Of the remaining 266 cases, 61 percent were conciliated and 26 percent were referred for legal hearings (the remainder were terminated or transferred) (HREOC, 1999). While the emphasis is on conciliation, a substantial proportion cannot be resolved between the parties and must proceed through the courts.

One recent study of employment complaints concerning the banking industry provides evidence of the issues still causing concern. From 1987-97 a total of 74 complaints were made against 14 banks in the area of employment by individual complainants and by the Finance Sector Union. Three main grounds for complaint were sex discrimination (14 complaints), sexual harassment (31 complaints), and pregnancy or family responsibility related or 'motherhood' complaints (29 complaints). 'Motherhood' complaints included matters such as accessing maternity leave, treatment while pregnant, return after maternity leave to a 'comparable position' or access to redundancy. In 1995 'motherhood' complaints accounted for well over half of all complaints lodged (Charlesworth, 1999).

AFFIRMATIVE ACTION

After the passage of the *Sex Discrimination Act 1984* the Labor Government continued with its policy development in relation to removal of employment disadvantage for women. The Government recognised that it's anti-discrimination legislation alone could not address or correct several workplace obstacles faced by women. It could not improve women's position in the labour market, could not totally open up a greater range of jobs to women or ensure that women would be able to compete on equal terms with men for promotion (Department of Prime Minister and Cabinet, 1984: 1).

The *Affirmative Action (Equal Opportunity for Women) Act 1986* provided legislative remedies for discrimination, which did not rely on individual grievance procedures. Affirmative action 'is the pursuit of equal employment opportunity by means of legislative reform and management programs' (Ziller, 1983: 23). This required the barriers that restricted employment and promotion opportunities for women in the workplace to be systematically eliminated (Affirmative Action Agency, 1990: 1). The Act compelled organisations with more than one hundred employees to implement an affirmative action program. The legislation specified an eight step program in which companies were to undertake an analysis of the position of women in their organisation through an examination of employment statistics, personnel practices and by direct consultation with women employees and trade unions. From the resulting information the company was required to devise a program that directly addressed the identified problems and set targets for specific organisational activities (for example selection procedures, training, and policies on dealing with sexual harassment) against which future EEO progress could be evaluated (Strachan, 1987). The legislation preserved an individual rather than collectivist focus in its reliance on the merit principle as 'competitive individualism is central to the process of appointment and promotion' (Thornton, 1990: 246).

The focus of the Act was towards individual enterprise responsibility in achieving the goals as opposed to legislative and economy wide standards (Strachan, 1987). The implementation of EEO principles presumed good corporate citizenship, the

effective participation of women employees in the development and implementation of the agenda, and a process of shared goals and participation. There were no explicit national guidelines or standards as to the process or outcomes; instead an array of national prizes and case studies provided the benchmarks from which enterprises could establish their own progress and success in realising EEO objectives.

While the ACTU and many women's groups supported strict penalties for organisations which did not comply, the Business Council of Australia (representing big business) and the Confederation of Australian Industry wanted participation to be on a voluntary basis (Working Party on Affirmative Action Legislation, 1985: 24-28). The upshot was that the penalties for non-compliance were weak: a company that did not submit a report might be named in parliament which, as Thornton (1990:231) suggests, is no sanction at all. In 1992 the Government added the sanction that companies breaching the legislation were ineligible for Federal Government contracts or specified industry assistance, similar to the American approach. This sanction was never used and has been removed under the 1999 legislation.

As with the sex discrimination legislation, debate followed the tabling of affirmative action legislation. The affirmative action legislation was seen by many well organised right-wing groups, especially conservative women's groups, as being an insult to women. It was seen by many employer groups as being a 'Stalinist plot to force otherwise profitable companies to sack their male employees and replace them with incompetent women' (Ryan, 1997:47).

The affirmative action legislation has been subject to criticism. Thornton (1990: 243) asserts that

> The legislation…operates to maintain the status quo by deferring to managerial prerogative. The distinction is largely one of form and substance. The form is victim–oriented; that is, it purports to be operating so as to secure justice and equity for women…. Indeed, the process may well make a difference for some individual women…who are most like their white, Anglo-Celtic, able-bodied male comparators in terms of education, experience and social class. This concentration on form occludes the substance of AA legislation which reveals that it is not directed towards outcome in the interests of women…but, in fact, can be manipulated by the perpetrator class who constitute the mangers in the workplace.

Thornton is correct in that the effectiveness of the legislation relies totally on what management wants to do about affirmative action.

The majority of the 2,500 organisations covered by the Act submit their reports on a regular basis. There is a small core of companies (approximately 3 per cent), however, who do not do this (Affirmative Action Agency, 1998: 13). Since 1993, 56 employers have not complied for three or more years (Affirmative Action Agency, 1994-98) so it is clear that a number of employers do not care if they suffer the penalty of being named in parliament for breaching the Act.

Since 1994 the Affirmative Action Agency has assessed reports and divided them into three categories. The distinguishing features of reports graded at the highest level is that they demonstrate careful planning including the setting and evaluation of their goals, objectives and evaluation mechanisms; include information on the results achieved; 'show they are seeking to actively address the lingering effects of past discriminatory practices; recognise that workplaces need to adapt to the changing roles and aspirations of women' (Affirmative Action Agency, 1995: 7). Approximately ten percent of organisations, especially large organisations, submit reports graded at this level (Affirmative Action Agency, 1998: 27-34). The lowest grade signifies a minimum

level of progress in developing and implementing an affirmative action program (Affirmative Action Agency, 1995: 9). Approximately one quarter of all reports are assessed at the lowest grade and organisations with high proportions of female employees overrepresented in this group. It seems that the more women employed the less likely organisations are to see the relevance of affirmative action. Issues like lack of career paths, undervaluing of women's work, high levels of casual employees and the disproportionate number of men in senior positions are major concerns in female dominated industries but are often not seen by employers as relevant to affirmative action (Affirmative Action Agency, 1995: 16).

It may be that a proportion of organisations, about one quarter, are satisfied to meet the letter of the law by supplying a report but in reality do little or nothing to advance equal employment opportunity. There has been no great movement for organisations to gain a higher rating, and the proportion of firms located within these three levels of assessment remains relatively stable.

Affirmative action legislation has been the most controversial of Australia's legislative attempts at equity and has been criticised particularly by employers. With the election of a conservative federal government in 1996 the legislation was reviewd and changes initiated on 1 January 2000. One of the most controversial features had been the term affirmative action and the name of the Act was changed to the *Equal Opportunity for Women in the Workplace Act 1999*. The guidance given to employers on how to implement a program has been reduced, indeed, the previous eight steps of an affirmative action program have been deleted, removing the emphasis on consultation with women and trade unions. To comply with the new Act, organisations only have to take actions on the priority issues identified when undertaking an organisational analysis. Reporting is still required on an annual basis (although this can be waived under certain circumstances) but the reporting form is no longer prescriptive (Affirmative Action Agency, 1999b). In addition, since 1999 organisations are only assessed on the basis of whether the report meets the minimum requirements of the Act (Affirmative Action Agency, 1999: 40).

Not all women are included in affirmative action legislation. More than half (56 per cent) of private sector female employees were not covered by the *Affirmative Action Act 1986* in 1994/95 (ABS, 1999a) since they were employed in enterprises with less than 100 employees. The most vulnerable group of workers, casual (temporary) employees, account for approximately one third of all women workers and it is estimated that only a minority of these workers (approximately one third) were covered by the Act because of the concentration of casual employment in the small, private business sector (Campbell, 1996). In addition, other women workers are likely to be ignored and excluded from the operation of a company's affirmative action policies if they work in part-time, temporary or low paid positions. In effect there may be an affirmative action program which covers some women workers in an organisation and excludes others. In a study of clerical workers Strachan and Winter (1995) found that there could be different policies within an organisation for different groups of women workers, with professional women having greater access to training and policies designed to retain women after they have had children.

The assessment of the impact of any affirmative action program is complex. The success of an affirmative action program relies on its implementation rather than just reporting. For example, many banks have received the top assessment from the

Affirmative Action Agency (Affirmative Action Agency, 1997) but the pattern of employment within banks includes ghettos of women in the lowest levels of their organisations. These women, many of whom are part-time or temporary, may not have access to maternity leave, have little access to training and are employed expressly as a pool of workers without a career path. These women form 'a large group of unskilled or semi-skilled women employees who will have no career futures, only limited access to full-time employment, and ever-diminishing opportunities to earn a reasonable income unless they work several part-time jobs concurrently' (Still, 1997: 16). An analysis of reports to the Affirmative Action Agency shows that the second group is larger than the group with career prospects (Strachan and Winter, 1995). Employers are seeking cheap staffing solutions in the labour intensive industries where most women work. These strategies have been easier to pursue through the decentralised industrial relations system of recent years, which has removed (and continues to remove) barriers to the employment of part-time workers and increases the inter-temporal flexibility of all workers.

WORK AND FAMILY POLICIES

Some recent debates have criticised the approach of removing women's disadvantage to make them equal to men, particularly as the male norm is not challenged (see Webb, 1997). Writers such as Bacchi (1996) and Cockburn (1991) argue that this entrenches women's disadvantaged position in the labour market and argue that the model of work and caring patterns as shared between women and men must undergo profound changes. These questions have been debated in Australia. The term 'work and family' is used to cover policies which assist male and female workers to combine their paid work with home and family duties. Gary Johns, as Assistant Minister for Industrial Relations in 1994 identified 'policies such as flexible working arrangements, permanent part-time work, job-sharing, career break schemes, paid or unpaid family leave, and assistance with childcare and elder care responsibilities, can help workers balance their work and family responsibilities' ('Government Perspective', 1994). Frequently in the Australian context 'work and family' is used to justify significant workplace changes which may or may not promote sharing of responsibilities or make the combination of responsibilities easier to bear.

In the 1990s in Australia the work and family rhetoric has been taken up by government, business and trade unions (Strachan and Burgess, 1998). The Minister for Industrial Relations, Peter Reith, asserted that the government had focused on work and family considerations in developing the 1996 Workplace Relations Bill because, 'apart from a genuine concern for the family, by implementing initiatives to assist workers with family responsibilities you will get increased productivity' (The Workplace Relations Bill: Supporting Work and Family, 1996: 9).

There has been no detailed consideration of what constitutes policies which would assist adults in the community to combine paid work and caring for a family, a policy which would surely have to start with the provision of an adequate income (Strachan and Burgess, 1998). Instead, the 'work and family' rhetoric talks frequently and uncritically about 'flexible' or 'new ways to work' which tend to encompass a range of flexible or 'alternative' working time arrangements such as expanded ordinary hours, annualised hours, job sharing, career breaks, *and* part-time work. The most obvious manifestation has

been the implementation of carer's leave in many awards and agreements. This generally means that an employee can use a few days of their sick leave a year to care for an ill dependent.

There are a number of difficulties with this overall approach in the Australian context. Although maternity leave has been widened to parental leave in many workplaces, paid maternity leave is more widely available than paid paternity leave (34 per cent of workplaces offered paid maternity leave in 1995 compared with 18 per cent paid paternity leave [Morehead et al, 1997: 115-16]). Although the trend in European laws is to offer longer periods of parental leave, the usage of this leave remains low, largely because of the reduced income or damage to careers that results and men 'show little enthusiasm' for parental leave ('Perspectives: Parental Leave', 1997: 119,125). Indeed since the effectiveness of parental leave 'depends on take-up rates and the conditions governing return to work, the increasingly precarious nature of employment must be seen as a threat' ('Perspectives: Parental Leave', 1997: 128). Similar conclusions can be reached for Australia.

ABORIGINAL EMPLOYMENT IN THE 1980S AND 1990S

By the 1970s there was a growing awareness of the vitality and complexity of traditional culture of Aborigines and the extent of the Aboriginal dispossession of lands was acknowledged by a wider group of the population. These developments led to increased government funding for Aboriginal projects and assistance. New opportunities opened up for Aborigines to obtain employment serving the diverse needs (legal aid, housing and education) of their people. In most cases it was women who were able to take advantage of these developments (Fox and Lake, 1995: 56). Community Development Employment Projects, established in 1976, attempted to provide people living on remote Aboriginal communities with the opportunity to overcome long term unemployment (Whitehouse, 1994: 10).

Recognition of Aboriginal culture and traditions increased and in 1989 the Public Sector Union gained an award for their members employed at the Central Land Council, an Aboriginal organisation. In this award the Industrial Relations Commission gave important recognition to Aboriginal traditions by inserting clauses pertaining to ceremonial activities and bereavement leave (Domm, 1989: 4). In 1991-92 two organisations negotiated awards which contained self-determination clauses which involved traditional ways of settling disputes, as well as clauses pertaining to ceremonial leave and extended bereavement leave (Plater, 1995: 214).

The ACTU widened the scope of its approach to Aboriginal employment in the 1990s by supporting the Labor Government's commitment to improving the conditions of Aboriginal and Torres Strait Islander people, seen in 1991 as 'still the most disadvantaged group in Australia today' (ACTU, 1991). In September 1991 the ACTU Congress resolved to continue the campaign to establish full award coverage and compliance for all Aboriginal workers and workers in Aboriginal communities. Affiliated unions were encouraged to intensify their pursuit of award coverage for all Aboriginal workers by allocating sufficient resources to adequately research the needs of such workers (ACTU, 1991). As well as looking at industrial areas as priorities for the future, the 1991 Congress also considered the union movement's role in reconciliation and justice, consultation, education, national land rights legislation and

infrastructure (ACTU, 1991). The 1994 ACTU Aboriginal Affairs strategy aimed at ensuring that no Aboriginal or Torres Strait Islander worker, enterprise or organisation would be award free over the following twelve months (Whitehouse, 1994: 11).

Despite the changes within the trade union movement and the wider community, employment disadvantage remains. The 1994 National Aboriginal and Torres Strait Islander Survey (NATSIS) interviewed 15,700 Aboriginal and Torres Strait Islander people at a time when the Aboriginal population of Australia was 303,250 people, which comprised 1.7 per cent of the entire Australian population (ABS, 1996: 113). At this time 27 per cent of the population in the Northern Territory were Aborigines compared to only one or two percent in other states. The labour force participation rate for aboriginal workers in 1994 was 58 per cent over all of Australia with Victoria (64 per cent) and Tasmania (63 per cent) recording the highest participation rates (ABS, 1996: 119). The mean income for employed persons in Australia in June 1994 was $27,100; however, the NATSIS showed a mean income for employed Aboriginal and Torres Strait Islander people of $21,300. Even when people employed in CDEP schemes were excluded Aboriginal income was still 10 percent below that of other Australians (see Table 2).

Table 2: Employed persons - mean annual income, 1994.

	Income $ Employed Non-CDEP	Income $ Employed CDEP	Income $ Total Employed
Males	26,500	12,200	22,300
Females	21,200	13,800	19,600
Total	24,300	12,700	21,300

Source: ABS, 1996.

DECENTRALISED INDUSTRIAL RELATIONS SYSTEM

In the 1990s there are several competing forces which influence women's participation in the labour force. Anti-discrimination legislation continues to operate, as does Affirmative Action legislation, although this was modified in 1999. Work and family policies, which aim to enhance a worker's ability to combine paid work and private caring activities, have been promoted widely. The question of equal pay has been revived with inquiries into this issue being undertaking recently. On the other hand changes in the labour market and conditions of work may have made it harder for women to participate in the labour market or worsened their working conditions. The deregulation of the industrial relations system which has promoted workplace and individual bargaining has been influential in the growth of temporary workers and in the spread of anti-social working hours.

The 1990s has seen a change in industrial relations and wage determination in Australia towards a system of collective bargaining at the workplace known as enterprise bargaining. This is now the primary avenue for wage determination with adjustments made on an employer by employer basis, a situation which would require many more cases to achieve the same coverage. Moves towards a decentralised system of industrial relations began slowly in 1987 (Burgess and Macdonald, 1990) and culminated in the introduction of the *Industrial Relations Reform Act 1993* which

initiated enterprise bargaining. Under this legislation the primary way to obtain a wage increase was through a collective agreement negotiated at an enterprise, either with or without trade union involvement. Workers without access to an enterprise agreement were reliant on a national wage case which provided minimal increases in wage rates.

The federal conservative (Liberal-National Party Coalition) government, elected in 1996, introduced industrial relations legislation whose major thrust is to deregulate employment arrangements and remove the potential intrusion over workplace arrangements provided by the award system and trade unions. The *Workplace Relations Act 1996* introduces the individualisation of workplace agreements and severely limits union powers. These changes are especially significant for many women workers who are dependent on the award system as the main source of employment protection, rights and wage increases.

A major feature of workforce change in the 1990s is the continued growth of insecure, temporary employment where workers do not receive leave entitlements. A large component of the growth in female employment is part-time work which has doubled since 1984 and now forms 39 per cent of all female employment. More than half of this part-time employment is undertaken on a temporary (the Australian term is casual) basis. Casual workers do not receive any leave entitlements. A mere 44 per cent of women workers work on a full-time permanent basis (Burgess and Strachan, 1998). This means that many of the measures designed to assist women workers such as parental leave and carer's leave are not usually available to this group of workers.

In the past decade flexible working hours arrangements have dominated the bargaining agenda (ACIRRT, 1998: 39). Over 70 per cent of agreements contain clauses that deal with changed working time arrangements - these include the introduction of annualised salaries, 12 hour shifts, time off in lieu arrangements and banking of hours provisions (ACIRRT, 1998: 40). The result is that many employees have a longer and less predictable working week than was the case a decade ago. Overtime and penalty rates are being absorbed into the base rate of pay, thus removing the economic disincentive for employers to utilise labour at anti-social times or in long shifts (ACIRRT, 1997: 29-30). Where women workers predominate, agreements are more likely to contain working hours and contract of employment provisions, and 'while open-ended flexibility may be beneficial to the enterprise, they may prove onerous for workers with childcare arrangements that are often inflexible' (ACIRRT, 1997: 28). Indeed the unpredictability of hours makes it more difficult to integrate the needs of family life. Flexible working hour arrangements are not necessarily beneficial for women or men and some arrangements such as the increased span of hours and the increased uncertainty of working hours are detrimental (ACIRRT, 1999: 101-125).

The current bargaining climate emphasises wage increases in return for productivity improvements and trading off conditions for increases. Many groups of women workers are disadvantaged as they have fewer conditions to trade and are frequently working in publicly funded service delivery organisations where productivity issues are difficult to judge. The centralised industrial relations system in Australia provided 'a reasonable degree of equity for women workers' when compared to less centralised systems (Hammond and Harbridge, 1995: 373). The ability of the centralised system to enable changes to flow from one sector to another was seen as a distinct advantage for women workers and one that is lacking in the changes to enterprise bargaining (Whitehouse, 1990; Bennett, 1994).

CONCLUSION

The picture of employment for women, Aborigines and non-English speaking migrants in Australia in 2000 is radically different from that in 1960. Overt discrimination policies have been removed and policies designed to achieve equal opportunity in employment have been put in place. Overwhelmingly, these policies have been designed to remove perceived barriers which these groups possess when competing for employment, that is, they seek to make women equal to men and so on. Few policies have sought to address the structure of work and the workplace. While 'work and family' policies of the 1990s have received publicity, they have no legislative force and the impact of these policies is limited and may even be detrimental to women's equal participation in some cases. The implementation of equal opportunity policies in Australia has spanned several decades and in the 1990s it coincided with dramatic changes in the industrial relations system. This has brought profound changes in working conditions such as increased temporary work and altered working hours that may be detrimental to the achievement of equal employment opportunity.

At the beginning of the twenty-first century the picture of employment for women Aborigines and other groups is complex. It is still possible to discuss women's employment as a distinct category as gender segregation of occupations remains a major feature of the labour market. Distinct features remain in the contours of Aboriginal employment. Overt discrimination against women and racial groups has lessened and there is legislation to remedy this. Yet the combination of paid employment and care of family is still a difficult one for many women who revert to part-time work or leave the workforce for a few years in order to accommodate these competing demands. Demands for equal employment opportunity, however, are ever-present so achieving equal participation in employment for women, Aborigines and non-English speaking migrants in Australia is still on the national agenda.

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NOTES

1 These Acts are the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Human Rights and Equal Opportunity Act 1986* and *Disability Discrimination Act 1992*. The total number of complaints alleging discrimination would increase if complaints lodged under state anti-discrimination legislation was included

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