

# INDEPENDENT EDUCATION UNION OF AUSTRALIA

## Submission on the Regulatory Review of the Affirmative Action (Equal Employment Opportunity for Women) Act 1986

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### EXECUTIVE SUMMARY

- i. The IEU believes that the Affirmative Action Act, as well as complementary EEO and Anti Discrimination legislation have ethical, moral and symbolic significance for the Australian and international communities. It represents the nation's stated community standard as to what Australia's legislators believe should represent fair and socially just employment practices and outcomes for all citizens regardless of gender, race, ethnicity, religion, disability etc. The Affirmative Action legislation makes fundamental statements about how we treat women in the Australian community.
- ii. Substantial national and international research now exists which argues that a nation's economic and social interests and a company's strategic competitive edge are advanced by ensuring that quality Affirmative Action plans and programs are in place.
- iii. The IEU believes that if the government is strongly committed to increased competitiveness, principles of choice, improved productivity as well as making a strong and unambivalent statement about what is fair and just for women in the workforce, then the Affirmative Action Act must be seen as part of achieving this - it should be seen as a tool to make the Australian economy more productive and efficient and its society more equitable and just.
- iv. The evidence available to the IEU from its members is that coverage of the non-government education sector by the Affirmative Action Act and the associated compliance with reporting provisions have achieved some gains in reducing workplace discrimination against women and also in more equal employment opportunities for women employed as teachers and school support staff.
- v. The IEU believes that the Affirmative Action Act is unfinished business for the Australian business and general community in both economic and social justice terms. It is fundamentally important that core institutions such as the nation's educational institutions can demonstrate a commitment to affirmative action and equal employment opportunity legislation and positive outcomes from its implementation. This has yet to be achieved and therefore the Affirmative Action Act should be maintained and strengthened.

### **Recommendations:**

- vi. The IEU supports the existence of a suite of legislation which strengthens and advances public policy in the area of equity whilst also providing remedies for individuals and groups. Thus the Affirmative Action act can support organisational and structural change, whilst anti discrimination laws can provide individual remedies, as can industrial relations laws in some cases such as unfair dismissal and by including pay equity principles. The complementary nature of this legislation should be strengthened.
- vii. The IEU supports a number of the recommendations contained in the Karpin report "Enterprising Nation", in particular those concerning targets negotiated with industry. "...

*the Taskforce believes that these targets could be set within a national strategy - to maximise the opportunities for cross-sectoral support, ensure a comprehensive approach to the problem and enable appropriate targets to be developed in a systemic manner." (p246)*

- viii. The IEU believes that the consultation requirements of the Affirmative Action Act's eight steps, including consultation with employees and unions, is fundamental to the success of Affirmative Action programs and should be retained and strengthened in the Act.
- ix. The IEU acknowledges the vital role of the Affirmative Action Agency in administering the Act in its regulatory and educative roles. The union urges that the agency be appropriately funded to ensure that it is able to fulfil its functions in monitoring compliance, in providing information and training, and in producing publications in print and Internet forms.
- x. The IEU recommends that there be a timetable established for the phasing in of the application of the Affirmative Action Act for organisations with 50 or more employees.
- xi. The IEU recommends that a system of workplace Affirmative Action audits should be implemented whereby the Affirmative Action Agency can audit a number of employers each year with a view to determining the extent to which programs and outcomes referred to in reports are being implemented in practice. The capacity of the Agency to undertake such audits should be adequately resourced as audits should supplement, not replace, reporting and educational initiatives of the Agency.
- xii. The IEU supports the maintenance and strengthening of sanctions for non compliance with the Act. The union believes that the penalty of naming in parliament of organisations which do not comply has some success and is certainly cost effective, as is the sanction of the government refusing to do business with any firm contravening the legislation. However, the IEU is particularly concerned that there are non-government education employers who are submitting reports which have been described by members in the school as "entirely a creative writing exercise". Such employers are not even arguing lack of resources, or lack of time but are engaging in a quite duplicitous process. The union believes some funding or financial penalty, in addition to naming in Parliament, should apply when such actions are discovered.
- xiii. The IEU believes reporting requirements in the Act should be strengthened so that there is greater transparency to ensure accountability. Schools and systems should be required to determine their gender equity objectives and to provide data on the achievement of such objects to the school and parent community.

## 1.0 Introduction

- 1.1 The IEU is the federally registered organisation which represents the industrial and professional interests of teachers and support staff in schools and other non government educational institutions across Australia. The IEU has a current membership of approximately 44,000 members of whom 72 per cent are women. This percentage of women members is closely reflected in the 70 per cent of the union's 103 federal and branch staff.
- 1.2 The Independent Education Union of Australia (IEU) appreciates the opportunity to put forward its views on the Commonwealth's Regulatory Review of the Affirmative Action Act 1986. The union regrets, however, that the Independent Committee overseeing the review does not include representation from community organisations or unions.
- 1.3 The union has a strong commitment to gender equity strategies for staff and students and supports policies and programs which provide practical strategies for removing barriers to women's successful participation in the workplace.
- 1.4 The IEU endorses the submission made by its Queensland branch, the Queensland Independent Education Union and strongly supports its conclusions that:
  - it is vital that the legislation not only remains in place but is strengthened in order to continue as an agent of change
  - if students attending non-government schools are to receive positive messages about the value of women in our society, then governments must provide the legislative framework to assist in the process. Any diminution of that framework will indicate to these students and the parent community that women are the less valued majority.
- 1.5 The IEU endorses the submission made by the Australian Council of Trade Unions (ACTU).
- 1.6 The IEU welcomes this review of the Act and sees it as an opportunity to take stock and to critically examine what has and has not been achieved and how the legislation can be strengthened. It is important to ensure that the Objects of the Act achieve their fundamental purposes which are to serve the nation's public interest by:
  - requiring employers to remove gender discriminatory employment practices;
  - implementing measures to ensure equal employment opportunities for women.
- 1.7 The union can say that since the introduction of the Affirmative Action Act, some advances in achieving equity and equal opportunity in employment for women have been made in non-government education. This is particularly the case in terms of process and policy outcomes which include consultation with the union and with employees at the school and system level, and these improvements are important (see attached policy documents). However, in terms of redressing the under-representation of women in senior administrative positions, the continued gender segmentation within the industry and the increasing precariousness of women's employment in education, the progress is slow. **For this reason, the union believes that the Affirmative Action Act should be maintained and strengthened and that it will be at the nation's cost if this does not happen.**

## 2.0 The National Interest: Benefits and Costs

### 2.1 The Economic Argument

- 2.1.1 As stated in the Issues Paper, the current review is set in the context of the Competition Principles Agreement and is part of a four year program to review existing Commonwealth legislation which may restrict competition as well as legislation which is costly for business. It is the union's view that it is a cost to the nation not to have well developed and implemented strategies to ensure that men and women can participate equitably in the workforce. From the late 1970's, there was strong opinion within important sections of the business community and in the federal government, that the Australian economy required comprehensive strategies to encourage and assist women's full participation in the workforce.
- 2.1.2 For example in 1979, well before the Affirmative Action Act had become law, ESSO initiated a Women in Management program to introduce professional women such as engineers, geoscientists and computer specialists into its traditional male industry. Despite resistance from the predominantly male staff, the program achieved an increase in women professionals from 20 throughout the 1970s to 117 by 1984. Another 11 women were recruited into the non-traditional wages area as apprentices and trainee operators in the gas plants.
- 2.1.3 ESSO's Chief Executive at the time, Mr Jim Kirk, who championed the changes, said he believed the increased participation by women in the organisation, "had changed the corporate culture for the better."
- 2.1.4 In 1986, in supporting the introduction of the Affirmative Action legislation, the Prime Minister lent his authority to the debate, and in particular, to the economic elements when he said: *"The Government is determined that women should be able to enter and compete in the labour market on equal footing with men and that outdated prejudices or conventions should not prevent them from fully participating. Neither individual employers nor the nation can afford to waste the valuable contributions which women can, and do, make to our economy."* (Australian Parliamentary Debates, House of Representatives, 19 February 1986 p 862)

The Prime Minister was instrumental in co-opting the support of 100 of Australia's top corporations to participate in a pilot project to test out strategies proposed in the Affirmative Action legislation.

- 2.1.5 These arguments were central to other government strategies such as the National Agenda for Women and the Australian Women's Employment Strategy. For example, the latter emphasised the importance of fully utilising women's skills for economic competitiveness:

*"In order to become economically competitive, the Australian economy needs to utilise fully the abilities and skills of its total labour force, women and men. Improvements for women will contribute directly to the broadening of Australia's skill base, industry restructuring and increased productivity."* (Department of Employment, Education and Training, Australian Women's Employment Strategy. Canberra: AGPS, 1998, p4)

2.1.6 Substantial national and international research now exists which argues that a nation's economic and social interests and a company's strategic competitive edge are advanced by ensuring that quality Affirmative Action plans and programs are in place.

2.1.7 For example, the Karpin report "Enterprising Nation - Renewing Australia's Managers to meet the Challenges of the Asia-Pacific Century" (April, 1995) indicates that increasing diversity in the workplace has the potential to significantly increase productivity. The report recommended that *"women should be a particular target group, and the multicultural workforce"*. [Recommendation Ten (a) (Band 1) Management for Diversity] and further that *"Implementation of diversity strategies in the private sector should involve upgraded assistance and advice from government agencies:*

- *the Affirmative Action Agency education and support role should be upgraded, appropriate resources put into disseminating information and tools to assist enterprises, and monitoring of progress for women in management carried out through adaptation of existing Agency statistical systems" [Recommendation Ten (c) (Band 1) Improved Agency Support for Promoting Diversity] (p258).*

*The report notes "that it is also apparent to the Taskforce that the national economy, and Australian business, cannot afford to operate with one hand tied behind its back by continuing to underutilise women in management." (p244)*

2.1.8 The Academy of Management Journal 1995, (Vol 38 No 1 272-287) includes an article "Competitiveness through Management of Diversity: Effects on Stock Price Evaluation". The article is *"...an examination of the potential economic benefits resulting from strong Affirmative Action programs... and the impact on the stock price behaviour of winning firms" (p273-4)* (ie those which had won US Department of Labor awards for their Affirmative Action programs).

*The research concluded that "prevalent organisational ethnic and gender bias should be eradicated not only because such bias is not ethical or moral, but also because it does not make economic sense. As the climate of competition becomes more intense, no enterprise can afford the senseless practice of discrimination."(p284).*

## 2.2 **The Ethical and Social Justice Arguments**

2.2.1 The IEU believes that the Affirmative Action Act, as well as complementary EEO and Anti Discrimination legislation have ethical, moral and symbolic significance for the Australian and international communities. It represents the nation's stated community standard as to what Australia's legislators believe should represent fair and socially just employment practices and outcomes for all citizens regardless of gender, race, ethnicity, religion, disability etc. The Affirmative Action legislation makes fundamental statements about how we treat women in the Australian community.

- 2.2.2 The IEU believes the Affirmative Action Act has played an important role in both regulating and educating for more equitable workplaces for women and that the Act and the Affirmative Action Agency should continue to require the reporting of affirmative action programs by employers with over 100 staff. The regulatory framework of the Act has the capacity to contribute significantly to the national interest and to a more just society in terms of addressing structural problems in employment, of achieving employment equity and developing inclusiveness strategies.
- 2.2.3 Such legislation has had an important role in positively reshaping community attitudes and the IEU believes the Affirmative Action Agency should continue to support changes in workplace attitudes and culture through information and training programs. An important issue for this review to consider is the development of strategies to encourage organisations to put more into the process - to do that they must see the requirements as benefiting their organisation not costing it.
- 2.2.4 It is widely recognised that the achievement of positive outcomes for women's participation in the workforce requires the creation of more flexible work patterns which suit their needs, especially in relation to family responsibilities. Such flexible work practices have been demonstrated to have proven benefits for retention, productivity and morale for both women and men, are consistent with effective management practices, and contribute to the economic and social wellbeing of the nation. It is an economic but more importantly a human rights issue. Having said this, the union is concerned that employers often use the term "flexibility" euphemistically and simply introduce changes which increase the precariousness of women's employment.

### 2.3 **The Government's Role**

- 2.3.1 The Karpin Taskforce concluded that *"if evolutionary change is relied on as a sole lever, it will take too long to improve the lot of Australian women in management, and to the same degree inhibit the improvement of management skills and enterprise performance."* (p244) ... and further *"the Taskforce recognises the importance of a government role in initiating and steering action towards change, especially where the private sector acting on its own, and without any agreed industry or sectoral strategy, has failed to adequately address the problem."* (p246)
- 2.3.2 The IEU believes that if the government is strongly committed to increased competitiveness, principles of choice, improved productivity as well as making a strong and unambivalent statement about what is fair and just for women in the workforce, then the Affirmative Action Act must be seen as part of achieving this - it should be seen as a tool to make the Australian economy more productive and efficient and its society more equitable and just.

### 2.4 **The Affirmative Action Act serves the National Interest**

2.4.1 The IEU believes that notwithstanding the progress so far made, in terms of the social justice and economic realities, we are not as far as we had hoped to be. In non traditional areas of employment, in middle and senior management positions, on corporation boards and government policy advisory committees etc, women remain the marginal participants. In terms of low-paid, low-skilled, and precarious areas of employment participation, women predominate. It is essential that the Affirmative Action Act be maintained and strengthened in the national interest.

### **3.0 Historical Context for Non Government Education and Trade Unions**

3.1 When the Affirmative Action Act was enacted in 1986, it did not cover voluntary bodies, including non-government schools or education systems such as Catholic dioceses.

3.2 In December 1992 the Affirmative Action (Equal Employment Opportunity for Women) Act, was amended to extend coverage to voluntary bodies with 100 or more employees. As a result, Catholic systemic employers in most states and 117 independent schools across Australia were then brought under the Act's umbrella.

The first reports under the amended legislation were lodged by non-government education employers in February 1994.

3.3 The 1992 amendments also required trade unions to comply with Affirmative Action reporting requirements and the IEU as a federally registered union reports on behalf of the State and Territory branches and for its own office.

3.4 The IEU's National Women's Committee oversees the union's Affirmative Action program and the preparation of the annual report to the Affirmative Action Agency. The Committee also monitors and supports Affirmative Action initiatives undertaken by State and Territory branches.

For the purpose of preparing this submission to the Regulatory Review of the Affirmative Action Act, the IEU's Women's Committee has collected data from the union's previous Affirmative Action reports, from the reports of non-government education employers, from Affirmative Action committees in schools and Catholic dioceses, and from activities of the affiliated IEU State and Territory branches.

### **4.0 The Effectiveness of the Affirmative Action Act in Non-Government Education**

#### **4.1 Key Issues**

4.1.1 The evidence available to the IEU from its members is that coverage of the non-government education sector by the Affirmative Action Act and the associated compliance with reporting provisions have achieved some gains in reducing workplace discrimination against women and also in more equal employment opportunities for women employed as teachers and school support staff.

4.1.2 The IEU believes that the Act provides an incentive for employers to review policy and procedures, to consult with employees and their unions and to

develop and implement practical steps to address affirmative action and workplace equity issues.

4.1.3 The role of Affirmative Action committees at workplace and diocesan levels in a number of states provides a forum for discussion of issues such as:

- Opportunities for training and development;
- Career path planning;
- Flexible leave provisions for family reasons;
- Access to childcare;
- Sexual harassment policy and procedures;
- Occupational health and safety issues.

4.1.4 The Affirmative Action Act and its reporting requirements have assisted the development of more effective management practices in regard to consultation about work practices, about training and professional development opportunities, and about selection and promotion procedures. Issues of workplace safety and procedures to counter harassment and bullying have been discussed and developed. (Copies of policies to counter sexual harassment from the IEU and from some Catholic dioceses are attached).

4.1.5 The IEU believes that schools which practise positive approaches to Affirmative Action have the capacity to impact upon students' attitudes and behaviour and thereby to educate for more equitable gender relations in the community.

4.1.6 Data from Affirmative Action reports provides an important source of information in regard to barriers to women's full participation and assists in the identification of successful strategies and practices. The union believes it would be a loss at school and education system levels if such data were not collected through Affirmative Action reports and thus were not available for systematic analysis and planning.

## **4.2 Positive Outcomes**

4.2.1 In all state and territories, the union has sought to establish and participate on affirmative action committees at diocesan and school levels in order to develop policies and support materials to address a range of workplace equity issues. The operation of the affirmative action committees in schools and systems have contributed to the following positive outcomes:

- Programmes of training for women in non traditional areas of financial management.
- Supervisory and management training for women in leadership positions in schools.
- Policy development in relation to job descriptions and selection criteria which are non discriminatory. This has resulted in changes to employment practices so that interviewing panels for engagement and promotion are gender balanced and members of panels are properly inserviced regarding appropriate interviewing skills. Application forms for promotion positions have been revamped to remove questions relating to a spouse's employment, family members etc.

- A systematic collation of statistics on issues such as women in promotion positions, illness and injury patterns as the basis for reviewing work practices and organisational reform.
- The development of a systematic approach to identifying professional development requirements which allow more women to advance along their chosen career path.
- A review of and changes to the use of language within school publications, policy documents, position titles etc to ensure a more gender inclusive approach. This contributes positively to the shifting of strongly entrenched cultural and attitudinal views, particularly in conservative boys' schools.
- The development of policies on part time and job share employment which recognise the need to ensure workplaces are more family friendly. In its work on these committees the IEU has been concerned to address changes and shifts in the prevailing political and industrial relations culture which is driving workplace restructuring and reform. Women generally in the workforce and in the highly feminised education industry are the most vulnerable in terms of employers seeking to redefine positions as part time, casual or redundant. This has led to the development and adoption of policy on part time and job share employment which protect their professional and industrial conditions.
- The development and adoption of policies on the elimination of sexual harassment, violence and bullying.

4.2.2 The spirit and intent of the above is also confirmed in the submission prepared by the Queensland branch of the IEU, which provides an outline of the practical benefits of the Act for the 51 systemic schools covered by the Brisbane Catholic Education Office and four non Catholic Schools. As indicated by the QIEU:

*"In non-government schools where the culture is traditionally male dominated in leadership positions, change takes even longer. The removal of reporting would not assist this change process. The requirement to report provides schools with a valuable opportunity to work collaboratively to produce and implement policies and practices affecting all staff with the emphasis on women."*

### **4.3 Problems and Costs in Implementation**

- 4.3.1 The terms of reference for this review requires an analysis of costs incurred by organisations in complying with the requirements of the Act. The IEU is not insensitive to the necessary commitment of human and financial resources necessary to achieve a rethinking of organisational structures and culture to redress the deep prejudice and direct and indirect discrimination which works against women in the workplace.
- 4.3.2 At present employers with fewer than 100 employees are exempt from the Affirmative Action Act and protects small businesses and other workplaces such as small schools and early childhood centres from the time and administrative effort associated with compliance. However the IEU believes that such workplaces would also benefit from Affirmative Action policies and practices and the IEU believes that at least those workplaces with 50 or more

employees should be required to participate in educational programs conducted by the Affirmative Action Agency.

- 4.3.3 The IEU would recommend that there be a timetable established for the phasing in of the application of the Affirmative Action Act for organisations with 50 or more employees.
- 4.3.4 However, while in a number of states non-government employing authorities have prioritised and committed resources to this agenda, others remain half hearted and even recalcitrant in their approach. The union therefore believes the Act and its implementation should be strengthened so that its goals can be achieved more quickly.
- 4.3.5 Nevertheless the IEU believes that the benefits of the Affirmative Action Act outweigh any short term costs in regard to the time spent in preparing the annual Affirmative Action report or in developing, implementing and evaluating Affirmative Action plans. Instead of regarding such inputs as "costs", they should be regarded as investments in more equitable, cohesive and productive workplaces.

## **5.0 Conclusions and Recommendations**

- 5.1 The IEU believes that the Affirmative Action Act is unfinished business for the Australian business and general community in both economic and social justice terms. It is fundamentally important that core institutions such as the nation's educational institutions can demonstrate a commitment to affirmative action and equal employment opportunity legislation and positive outcomes from its implementation. This has yet to be achieved.
- 5.2 At the time of the 1992 Effectiveness Review undertaken by the Affirmative Action Agency, there were significant areas of economic and social inequality for women and this still remains the case. The IEU believes that both the regulatory and educational aspects of the Affirmative Action Act can play an important role in overcoming the barriers experienced by women and in ensuring that larger workplaces have policies and action plans in place to achieve more equal opportunities and outcomes for women.
- 5.3 Given the IEU's experiences prior to the Act's coverage of the non-government education sector in 1992, there are strong concerns about self-regulation or quasi-regulatory standards in achieving workplace equity for women. The compliance requirements of the current Act serve to focus attention on key issues such as selection and promotion, training and development, flexible work practices and OHS issues, thereby achieving practical, measurable gains but also changing workplace culture. Processes and outcomes are both important in ensuring that workplaces become more equitable and inclusive for women.
- 5.4 The Issues Paper provided for the Review notes that women "*continue to earn less than men; are proportionately less likely to be in management positions and receive less employer provided training*" (p9). If women are to have equal status and to be seen as partners in building the nation, then such a state of affairs is unconscionable. The IEU believes that the governments of the nation must not only enact legislation but must ensure its rigorous implementation.

- 5.5 To that end, the IEU supports the existence of a suite of legislation which strengthens and advances public policy in the area of equity whilst also providing remedies for individuals and groups. Thus the Affirmative Action act can support organisational and structural change, whilst anti discrimination laws can provide individual remedies, as can industrial relations laws in some cases such as unfair dismissal and by including pay equity principles. The complementary nature of this legislation should be strengthened.
- 5.6 The IEU supports a number of the recommendations contained in the Karpin report "Enterprising Nation", in particular those concerning targets negotiated with industry. *"... the Taskforce believes that these targets could be set within a national strategy - to maximise the opportunities for cross-sectoral support, ensure a comprehensive approach to the problem and enable appropriate targets to be developed in a systemic manner."* (p246)
- 5.7 The IEU believes that the consultation requirements of the Affirmative Action Act's eight steps, including consultation with employees and unions, is fundamental to the success of Affirmative Action programs and should be retained and strengthened in the Act.
- 5.8 The IEU acknowledges the vital role of the Affirmative Action Agency in administering the Act in its regulatory and educative roles. The union urges that the agency be appropriately funded to ensure that it is able to fulfil its functions in monitoring compliance, in providing information and training, and in producing publications in print and Internet forms.
- 5.9 As indicated above the union recommends that there be a timetable established for the phasing in of the application of the Affirmative Action Act for organisations with 50 or more employees.
- 5.10 A system of workplace Affirmative Action audits should be implemented whereby the Affirmative Action Agency can audit a number of employers each year with a view to determining the extent to which programs and outcomes referred to in reports are being implemented in practice. The capacity of the Agency to undertake such audits should be adequately resourced as audits should supplement, not replace, reporting and educational initiatives of the Agency.
- 5.11 The union supports the maintenance and strengthening of sanctions for non compliance with the Act. The union believes that the penalty of naming in parliament of organisations which do not comply has some success and is certainly cost effective, as is the sanction of the government refusing to do business with any firm contravening the legislation. However, the IEU is particularly concerned that there are non-government education employers who are submitting reports which have been described by members in the school as "entirely a creative writing exercise". Such employers are not even arguing lack of resources, or lack of time but are engaging in a quite duplicitous process. The union believes some funding or financial penalty, in addition to naming in Parliament, should apply when such actions are discovered.
- 5.12 The reporting requirements in the Act should be strengthened so that there is greater transparency to ensure accountability. Schools and systems should be required to

determine their gender equity objectives and to provide data on the achievement of such objects to the school and parent community.

- 5.13 The Tripartite Advisory Committee established after the 1992 Effectiveness Review should be re-affirmed in its role and operation as it was a forum for constructive dialogue amongst the Agency, employers and unions.

**Attachments:**

1. IEU submission to the 1992 Affirmative Action Act Review (without attachments).
2. Sydney Catholic Education Office - Affirmative Action Resource for Principals.
3. IEU Affirmative Action - Key Organising Issues and Implications.
4. IEU Affirmative Action Strategy Paper - Increasing Women's Representation in Unions.
5. IEU Equal Employment Opportunity Policy.
6. IEU Selection Policy and Procedures.
7. IEU Guide to Casual, Part time and Job Share Employment.
8. Sydney Catholic Education Office - Jobsharing Guidelines, Systemic Schools.
9. IEU Guide to Leave for Parenting and Family Responsibilities.