

CHAPTER 7

Designing the Process of Workplace Change through the Affirmative Action Act

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Introduction¹

The blindness of labour institutions to the interests of women has led to the creation of a body of legislation to mandate equal wages between the sexes, equality of opportunity and family friendly workplace policies. In spite of almost a decade of legal apparatus at the international, national and State levels, movement toward gender equity has seriously lagged behind women's rapid entrance into the Australian workforce (Mitchell 1998). As Baxter, Eveline and Bacchi point out in this volume, culture remains remarkably resistant to change in spite of legislation and political rhetoric promoting gender equality.

The imperviousness of masculine work culture to change through law in Australia has been attributed to reliance on legislation that does not demand enough of employers, that gives too much latitude for compliance and that does not impose heavy penalties on those who fail to take gender equity seriously. These facets will be referred to in this paper as the law's gentleness, looseness and weakness respectively, and will be examined in relation to the legislative centrepiece for cultural change in Australia, the Affirmative Action (Equal Employment Opportunity for Women) Act 1986.

The objective of the Affirmative Action Act (AAA) is for each employer to rid the workplace of sexual discrimination so that women have as many employment opportunities as men. The AAA does not prescribe outcomes but rather processes that align closely with standard business practices. In this sense, the legislation is gentle. Its looseness stems from the fact that the mechanisms for correcting discrimination are left entirely to the discretion of employers and employees. The weakness of the AAA lies in the absence of an array of institutional artillery that

theorists of regulation claim are necessary to bring about cooperation between regulators and regulatees (Ayres and Braithwaite 1992). The AAA does not provide a range of sanctions, escalating in severity, to encourage persistent non-compliers to reconsider their options and see advantage in finding co-operative, law-abiding solutions.

This paper argues that while the penalties associated with failure to implement affirmative action legislation in Australia are low, the psychological stakes associated with interpreting the legislation and implementing it in the spirit in which it is intended are high. Under such circumstances, strengthening legislation may fail to produce the psychological surrender that is a necessary part of changing culture. In the long term, 'loose' and 'gentle' legislation may be the more productive option, providing that implementation is properly planned, resourced and monitored. This paper proposes four principles of implementation: (a) value consensus, (b) empowerment, (c) institutional redundancy, and (d) interlocking social chains. All four strategies were used to achieve bipartisan support for the AAA in parliament, but they were not carried over into the stage of implementation.

The paper is divided into six parts. The first delineates the central features of the AAA. The second section examines the way in which psychological stakes can be high even while recognising the legislation as loose, gentle and weak. The third section uses parliamentary debates to illustrate that the loose, gentle and weak nature of the legislation was fully recognised by politicians, but was also feared. The fourth section shows how these qualities enabled the building of consensus among politicians from opposing parties, a left-right alliance that was crucial to getting the legislation passed by both houses of parliament. The process of designing and building support for the legislation also involved the operation of the principles of empowerment, institutional redundancy and interlocking social chains. The fifth section argues that the strategies are generalisable beyond the parliamentary setting and can be developed as institutions (as norms or accepted practices) that facilitate social adaptation and the constructive resolution of conflict in organisational contexts. Evidence is presented to show the patchwork way in which value consensus, empowerment of employees, institutional redundancy, and interlocking social chains were at work at the implementation stage. Where they were employed, changes in workplace culture were evident. The final section reviews the recent changes in implementation that offer hope for the evolution of workplace cultures that meet the needs of both women and men and directions for the future.

Central features of the AAA

Australia's Affirmative Action (Equal Employment Opportunity for Women) Act 1986 mandates change in the workplace to remove gender-based discrimination. When first introduced, it affected all private sector employers with 100 or more employees and institutions of higher education. In 1992, it was amended to also include community organisations, non-government schools, unions and group training schemes.

The legislation requires employers to set up an affirmative action program that incorporates eight steps:

- issuing an equal employment opportunity policy statement to all employees;
- appointing a senior officer responsible for the affirmative action program;
- consulting with trade unions;
- consulting with employees;
- collating and analysing the employment profile of the workplace by gender and job classification;
- reviewing employment policies and practices to identify sources of discrimination;
- setting objectives and forward estimates for the affirmative action program; and
- putting in place self-regulatory procedures to monitor and evaluate progress.

Companies are required to report on an annual basis, in writing, to the Director of the Affirmative Action Agency detailing their progress in implementing their programs. If a report is not submitted without good reason, or if the report does not indicate sufficient progress in implementing an affirmative action program, the employer is sanctioned by being named in parliament. A further sanction added after the five-year effectiveness review of the AAA was that government contracts would be denied to companies not in compliance with the legislation.

Since 1995, changes have been made to the reporting form used by companies and the feedback provided by the Affirmative Action Agency (Affirmative Action Agency 1995). The eight steps specified in the act have been incorporated into a best practice model so that affirmative action activities can be fully integrated into the strategic business plan. These reports are given an assessment on a five-point scale by the agency staff to provide feedback to individual organisations and benchmarks for different industries.

Loose, gentle and weak – yet threatening

From a traditional legal perspective, law that is not backed by punitive sanctions and that is vague and non-specific is bound to be cast aside as unimportant law, as a nice display of social etiquette, or a cynical display of political rhetoric. The AAA has always suffered from such characterisations. Where the objective is workplace reform, the law's looseness, gentleness and weakness have been widely regarded as serious liabilities (Sawer 1990; Thornton 1990; Poiner and Wills 1991; Bacchi 1994b).

Pessimism is understandable in view of the social changes envisaged, changes to (a) how work can be done, (b) what constitutes effective performance, (c) organisational goals, (d) interpretations of workplace behaviour and (e) workplace behaviour itself. The social change required to reform workplaces is not cosmetic, but deeply cultural (Burton 1991; Eveline 1994c: 1995a).

Change of this kind impinges on the psychology of individuals. If it does not, one is left with no more than lip service to a new social order. Substantive change to work practices means that basic beliefs, social truths, habits and lifestyles of individuals must be challenged and re-evaluated at the micro level of social interaction. This process is threatening to all individuals, whether they be AAA sympathisers or antagonists. Under these circumstances, the law does not have to demand or threaten much. The threat is the change. Fear of change in this context is rational. The gender-friendly workplace is an ideal rather than a tried and proven organisational structure, and getting there involves taking chances, making mistakes and frustration enough to dampen the enthusiasm of the most ardent supporters.

Having outlined the reasons for insecurity and resistance at the individual level, how can individuals be accommodated in programs to transform workplace culture? Why not use law to impose a new order from above? The answer is that change imposed from above within a democracy does not probe deeply enough into the culture to affect what really matters, the way men and women view each other in day-to-day interactions. A realistic objective in changing the culture of a workplace is to win over a critical mass to the idea of change, communicate clearly the desired end point and achieve the co-operation of key players to get there. Obviously, legislation that is highly prescriptive and punitive will have an effect, but change of this kind is likely to be too narrow, too circumscribed, and easily overturned.

Examples of the way in which specific directives to a workforce can yield effective, but narrow, change abound. In academia, the adoption of rules to remove sexist language from the print media has had a clear impact on the written word. These days, within universities, senior

academic staff invariably display exemplary compliance with such rules, but sophistication in linguistic practices has not been accompanied by equally sophisticated insights into the barriers facing women in academic environments.

Furthermore, specific prescriptive rules tend to be owned by their makers rather than by those who are expected to obey them. When the Australian government banned smoking on airlines, airline staff regrettably explained to passengers that smoking was prohibited due to government regulations. It took a considerable period of time for the regret to fade, for tones of blame to be set aside and for airlines to accept responsibility for safeguarding their passengers' health. Where change in culture is the goal, ownership for regulations needs to be more quickly transferred to the regulated, along with the responsibility for identifying the breadth and depth of the change that is required. Psychological research has provided a body of evidence that warns of the way in which external controls on behaviour can reduce feelings of self-determination and subsequent motivation to take the initiative in achieving related goals (Festinger 1957; Festinger and Carlsmith 1959; Lepper 1973; Boggiano et al. 1987).

A third argument against prescriptive, punitive regulation is that of a psychological backlash. Brehm and Brehm (1981) use the term 'reactance' to describe the counterproductive effects of trying to force individuals to take actions that impinge upon highly valued freedoms. Under such circumstances, sanctions designed to have a deterrent effect can increase the likelihood of undesirable behaviour. A similar effect has been observed among those who have a highly emotional disposition (Makkai and Braithwaite 1994). They became less compliant when faced with deterrence.

These findings can be drawn together to postulate that prescriptive, punitive law incurs significant psychological costs that may work against the objectives of the legislation. The notion of affirmative action threatens core aspects of individuals' beliefs systems, their identities. In such cases, the 'sticks and stones' thrown by others are less of a threat to the individual than the 'names' one is forced to call oneself if one complies.

The central propositions of the argument as to why prescriptive, punitive legislation may not work more effectively than loose, gentle and weak legislation are as follows. Threats to a person's sense of self can override threats from external sanctions. Culture plays a pivotal role in the definition of self. Attempting to change culture through legislation threatens individual identity. The threat will be greatest among those most attuned to that culture. The AAA is a piece of legislation that explicitly seeks to change culture 'through changing individuals' work-related identities. The legislation targets employers and senior managers,

most often men who are well socialised into a culture that perpetuates discrimination against women. These senior executives are required, by law, to listen to women as well as men, and to identify their own discriminatory practices in appointing staff, allocating tasks and recommending promotions. Having faced their shortcomings in their work performance, they are required to find solutions. For these reasons, senior business executives might be expected to shirk their responsibilities under AAA, but they can also be expected to show high levels of psychological reactance when force is applied to elicit compliance.

Individuals who perceive assaults on their identities are not without means to protect themselves (Braithwaite et al. 1994b; Braithwaite 1995). Indeed they are particularly powerful in launching a defence at the psychological level. One posture is resistance, in which individuals engage in active defiance, forcefully opposing the government and its rules and regulations. Resistance is likely to result in campaigns to oppose, overturn or undermine legislation. The fate of affirmative action in America demonstrates the power of resistance to undo social justice initiatives. The second posture is disengagement. This response involves passive withdrawal and the placement of an impenetrable psychological barrier between oneself and government. Under such circumstances, regulators have limited capacity to have any effect at all on compliance, even with powerful sanctions at their disposal. Those who disengage don't trust government, don't feel socially connected to the regulatory community, and don't care about the consequences of non-compliance.

Both these postures are consistent with theoretical accounts of how individuals choose groups that define, maintain and enhance their social identities (Tajfel 1978; Turner 1987). As part of this process, differences from out-groups are as important to self-definition as similarities with in-groups. For employers faced with change through affirmative action legislation, work identities are protected by defining government and its agents as the out-group which is forcing destructive regulations on the workplace and the community at large. Once an in-group and out-group construction is in place, group processes work to keep the identities of these groups as different from each other as possible. Thus, employer groups are likely to become entrenched in present culture, closing themselves off from that group that most wants to influence them and change their practices. This process is the antithesis of what is required to achieve the legislative objectives of the AAA. The process should be one of opening the doors to new ideas and sharing identities. Gentle, loose and weak legislation can allow such a process to occur providing implementation builds a consensual framework, provides for institutional redundancy, empowers workers at the grass roots and promotes networking across diverse groups.

Before discussing the use of these strategies in winning support for the legislation, parliamentary debates and newspaper reports will be used in the next section to substantiate the proposition that loose, gentle and weak legislation carries threat. The Affirmative Action Bill was publicly acknowledged by all sides of politics as being loose, gentle and weak, much to the ire of those wanting social change. Yet there was genuine fear, even among sympathetic politicians, at what it might do.

Reviewing political reactions to the bill in 1986

Parliamentary debates

The frustration aroused by the looseness of the legislation was articulated by the then leader of the Opposition, John Howard, who referred to the legislation as 'symbolic' and doing less for women's work opportunities than the Coalition parties' policies on 'freedom of choice in industrial relations, permanent part-time work, retraining schemes, income splitting and child care tax relief'.² Others, such as Andrew Theophanous, who were more supportive, also had reservations about how much could be accomplished with such open-textured legislation: 'It is a waste of time establishing any such [affirmative action] program if the matter of child care is not taken into consideration . . . and given due prominence in rearrangement of the working conditions which women face.'³

The second characterisation of the AAA was identified by Senator Coates when he described the bill as 'a very gentle piece of legislation',⁴ that was neither demanding nor threatening to Australian business. The first director of the Affirmative Action Agency, Valerie Pratt, confirmed that the requirements of the act were not intended to be particularly taxing for business, being no more than 'a blueprint for good management of human resources' (Affirmative Action Agency 1990: vii).

The fact that the only punishment for non-compliance — being named in parliament — was a social rather than financial sanction led to a widespread view of the bill as weak. While the business sector and some politicians⁵ echoed the position of the social scientists (Anderson et al. 1977; Tittle 1980; Braithwaite 1989; Grasmick and Bursik 1990) that loss of reputation can be as punitive — if not more so — than economic sanctions, others, particularly trade unionists and feminists, were sceptical (Ronalds 1990). Their scepticism was understandable in the light of some observations made during the parliamentary debates. Senator Crowley, after defending the bill's sanctions, added: 'I might say that the naming of a firm or an organization will happen only after that firm or organization has had the opportunity to advance good reasons for its inability to produce a report on time or actually to implement a program. The other penalty that ought to be noted is that there is a fine and/or

jail term if any of the confidential information in the private report is released improperly'.⁶ The message given was not one of legal invincibility on the part of law enforcement agencies, but vulnerability.

The looseness, gentleness and weakness of the legislation were regarded widely as symptoms of backdown and compromise. Senator Hill argued that 'the major problems facing women are really beyond the competence of this bill to remedy'⁷ and that the beneficiaries will be a small elite group: 'Basically, this Bill provides a tool for women whom I might describe as being in the know, women who are already in the bureaucracy, femocrats with their networks, women in middle management, women in tertiary and financial institutions, women who already have access to the system, generally with education and reasonably available prospects of opportunity.'⁸ Senator Hamer concluded that if there was nothing more behind the bill than 'creating non-binding programs which employers may or may not carry out . . . the Government [had] indeed laboured mightily and brought forth a mouse'.⁹ More deeply held regrets were expressed by feminists who believed that the government had compromised its commitment to the principle of equality for women (Sawer 1990). Peter Baldwin spoke on the 'cogent criticism of the legislation coming from such women's groups as the National Women's Consultative Council, and also from the Australian Council of Trade Unions, which feels that the Bill has not gone far enough'.¹⁰ Janine Haines, the leader of the Australian Democrats at the time, criticised the legislation as 'desperately weak'¹¹ and 'essentially defective',¹² not going as far as many people wanted and, in effect, being an affirmative action bill without a great deal of action.¹³

In spite of this convergence of opinion that the bill was innocuous, if not useless, conservatives were far from complacent. While part of their rhetoric was undoubtedly intended to impress their constituency and play to the gallery, part also reflected deep-seated fear, even insightfulness. The conservative forces in the parliament couldn't believe that the government had put up legislation which was 'to be a toothless tiger'.¹⁴ It had to be, according to Senator Knowles, 'the thin end of a wedge'.¹⁵ Senator Crichton-Browne described the bill as 'diabolical and draconian' - 'a frank, factual and fair description',¹⁶ he added, because 'there is far more to this legislation than meets the eye'.¹⁷ Those who were suspicious of the bill searched hard to discover the hidden powers that were going to be used to unravel the social fabric of society. The debate against the bill raised the themes of family values, women's self-esteem, the merit principle and the rise of mediocrity. Senator Crichton-Browne attacked the bill as a threat to family tradition and as a deep offence to those women who spend their time as wives and mothers: '[The Bill] is an attempt to undermine the confidence of these women, to leave them

feeling inadequate and feeling that they have not fulfilled a complete and absolute role in the community'.¹⁸ The senator extended his objections to the domain of paid work, expressing the view that the bill would 'Demean the achievements of women who have already succeeded', 'but will be of great assistance to all those incapable women applying for jobs'.¹⁹ This was a reference to what Senator Powell referred to in a later debate (on the 1992 amendment to the AAA) as 'The old bogey of quotas'.²⁰ The reference to the setting of objectives and targets in the legislation was regarded as softened language for quotas which would overturn the merit principle and, according to Senator Short, take Australian society down a path of 'mediocrity and the demise of excellence' with a resulting 'dreadful greying effect of bringing people to a common denominator'.²¹ The debate was colourful and passionate.

Looking beyond the speeches at the amendments proposed and particularly at the divisions that were called in the Senate, a more credible picture emerges of the major concerns of the Opposition and of the business community. Senator Baume, who was on the Working Party that was set up to look into the need for legislation and to plan the legislation, proposed some 40 amendments in the Senate, four of which are particularly revealing. The Opposition wanted the affirmative action program to be voluntary.²² They did not want to see an increase in government bureaucracy and regulation.²³ The Opposition wanted clarification on the title of the bill, specifically they wanted Affirmative Action taken out entirely, leaving just Equal Employment Opportunity.²⁴ Third, the Opposition wanted a sunset clause in the legislation so that it would no longer be operational after five years²⁵ and, finally, the Opposition wanted to curb the powers given to some of the actors under the legislation, specifically the director of the Affirmative Action Agency and the trade union movement.²⁶ In short, the Opposition did not want the creation of a new institutional base to counter entrenched practices.

The loose, gentle and weak nature of the legislation did not sit comfortably on the shoulders of the Opposition and there is little evidence that they considered it to be necessarily ineffectual. Instead of triumphing over the weakness of the legislation, the Opposition invested a high level of energy in limiting its influence. As Senator Crichton-Browne noted: 'Owing to the imprecise words used in the Bill it is impossible to foretell exactly the effect that this Bill will have. In large part it will depend on the mood of the person occupying the position of Director of Affirmative Action.'²⁷ It was also going to depend on the mood of ordinary Australians.

Robert Goodin (1982) uses the term 'loose laws' to describe legislation that specifies goals without specifying any particular mechanisms for achieving them. The Affirmative Action (Equal Employment Opportunity

for Women) Act 1986 fits this characterisation well. Goodin has argued that the kind of uncertainty recognised in the above quote from Crichton-Browne is a by-product of loose law, but not a by-product that is necessarily undesirable. Loose laws 'offer opportunities for realizing efficiencies impossible with rigid rules' (Goodin 1982: 66). Those whose explicit goal is to avoid the implementation of the legislation are seriously disadvantaged by 'not knowing how far they can safely go before incurring legal liability' (Goodin 1982: 67).

The media

The controversy over the bill was widely reported in the media and the community was given the message that life would never be the same again. The *Australian Financial Review* (24.7.84) reported the composition of the Working Party under the heading, 'Women's program watchdogs named'. The *Bulletin* (22.4.86) announced the new legislation with a story entitled 'New law, new threats to get women more "male" jobs'. As the legislation reached implementation stage, the *National Times* (15.3.87) proclaimed that the 'Government faces tough public relations job on affirmative action', while the *Age* (11.4.87) ran a story headlined 'Companies prepare for female invasion'. Newspapers focussed on quotas, threats to male breadwinners, feminist unrest and changing family traditions.²⁸

Furthermore, newspaper reports on the consultation process among interest groups exposed friction and tension. The *Australian* (11.7.84) headlined their story as 'Affirmative action plan unleashes angry debate', and the *Age* (6.6.84) anticipated differences on the working party with the business sector pushing for non-interventionist legislation. The *Australian Financial Review* (4.9.85) announced the Business Council of Australia's opposition to prescriptive legislation, fearing it to be counter-productive because it conveyed a message of positive discrimination rather than support for the merit principle. The opposition of State branches of the Chamber of Commerce was also given coverage (*Australian* 7.6.84). The rift between the government and the business sector at the time of the second last meeting of the working party made news in the *Australian Financial Review* (4.9.85), with the government expressing a willingness to negotiate. The angered response from feminists about government being too accommodating to business was subsequently reported in the *Sydney Morning Herald* (19.9.85). The concern from women's organisations - that the legislation did not go far enough - was aired in the *Australian Financial Review* (7.6.84) with the legislation described as a 'sop to business and unions' by the Women's Electoral Lobby. While all these accounts were a fair representation of

the divisions that existed, the positive side of the affirmative action story, that of successful negotiation and bipartisan support, was not given an equal hearing. Later it will be argued that public ignorance of the positive aspects was one of the major impediments to the affirmative action legislation being implemented as intended.

Designing principles for cultural change

How can loose, gentle and weak legislation be an effective means of achieving broad social change? The story of the passage of the legislation through both houses reveals four useful principles.

At the centre of the success of legislating for affirmative action in Australia was the widely recognised negotiation style of the Prime Minister, Hawke-style consensus. The strategy was familiar to the Opposition. William Coleman opened his speech in the House of Representatives as follows: 'I fear that the Affirmative Action (Equal Employment Opportunity for Women) Bill is a characteristic Hawke Government measure. It is put forward to advance a cause we all support - the removal of barriers to equality of opportunity for women. However, . . .'²⁹

The openly acknowledged point of consensus was the value, equal opportunity for all, a value that was at the heart of Liberal Party ideology, Labor Party ideology and at the heart of Australian society. Academic lawyers have been dismissive of such values as 'motherhood statements' that have no imperative for action (Krygier and Glass 1995; Ziegert 1995). Elsewhere it has been argued that values, like mothers, are greatly underestimated (Braithwaite 1994a; Braithwaite and Blamey 1996). Values that enjoy social consensus, like equal opportunity for all, provide the impetus for engagement by civil society and are the umbrellas under which dissension can be aired with confidence and conflict dealt with constructively (Fisher and Ury 1981).

The government initially secured agreement, 'at the level of principle', from the Opposition, other government members, business, trade unions and women's groups, that equality of opportunity was something for Australian society to honour. The government then pursued the next step of amassing data, undertaking consultations and running affirmative action pilot programs to gain support for the proposition that women were not getting a fair go in Australian workplaces. Staff were seconded from the private sector to the Affirmative Action Resource Unit, set up by the government to provide advice to pilot programs and government, and to undertake public speaking engagements with business representatives, trade union organisers, women's organisations and other individuals and groups in the community. It was a select group that held consensus together, but it was an influential group, crossing party

lines and incorporating representatives of the major players in the workplace. Furthermore, the foundations were laid for future implementation of the legislation through strengthening linkages between the private and public sectors. The consensus surrounding legislation for equal opportunity for women was nurtured painstakingly from the time the Discussion Paper was introduced in 1984 until the Affirmative Action Bill was passed in 1986.

The parliamentary records demonstrate clearly that consensus surrounding equal opportunity framed the debates. At the second reading, speakers for the Opposition repeatedly placed their commitment to equal opportunity on the record: 'The Opposition does not object to this legislation because we accept wholeheartedly the principle of equality of opportunity for women.' (Mr Connolly);³⁰ 'we have decided not to oppose it because of our deep commitment to the concept of equal opportunity in employment.' (Mr Howard);³¹ 'There is little doubt that every member of this chamber would be very seriously committed to the principle of equal opportunity in employment.' (Mr Adermann);³² 'Equal opportunity for women is a much valued principle.' (Mr McGauran).³³ This was to be a pattern followed by subsequent speakers for the Opposition in the House of Representatives and in the Senate. Nobody wanted to be outside the group that wanted Australian women to have a fair go. Politicians were uniformly particular in pointing out that they supported the overarching principle of equal opportunity and that their objections focussed on 'the machinery the Bill establishes'.³⁴

Not only did this consensus frame the debate on the bill, it framed the process of its development. All the 'hidden agendas' of the bill that caused so much concern later on were pre-empted and addressed directly by the Prime Minister, Bob Hawke, with the release of the 1984 Discussion Paper (Department of Prime Minister and Cabinet 1984). These issues included: equating affirmative action with quotas, interference in the private sector, overturning the principle of merit and reducing industry efficiency. At the outset, the use of the term 'affirmative action' in the Australian context was differentiated from the use of the term in the US context. According to the Prime Minister, 'Our approach is not one that relies on the experience of other countries. We have explicitly rejected the American model with its system of court-imposed quotas. . . . Put quite simply, equal employment opportunity is our objective, and affirmative action is the way to achieve it.'³⁵ He went on to say that 'the Government strongly believes that all jobs should be awarded on merit . . . and that affirmative action programs will only achieve long term benefits, for women and the economy, if they are regarded as employment policies designed to improve the skill, efficiency and mobility of the work force.'³⁶ Finally, he expressed confidence in

business, stating that what was needed was 'a self-determined, industry specific approach'³⁷ and concluded on the note of consensus: 'The proposals in this paper have been widely discussed between the government, business, and unions. I repeat how grateful my Government is for the very substantial support we have already received from these quarters. To that I now add the indication of support from the Opposition.'³⁸

The consensus, while Hawke's trademark, did not come to fruition without a support base. This base comprised women in the community, activists and femocrats, a base recognised more narrowly by Wendy Fatin in her tribute to her fellow politician, Susan Ryan, and the head of the Office of the Status of Women, Anne Summers,³⁹ and more broadly by Peter Duncan: 'Women's groups have kept up the pressure, have kept us informed and have continued the struggle for women's rights. . . . One of the fortunate results . . . has been the recognition by the Government of the need for this legislation.'⁴⁰

The pressure was indeed due to the efforts of many women over a decade or more who brought their organisations into co-operative alliances (Ronalds 1990). Together they advanced the feminist agenda through the setting up of a policy machine in the bureaucracy where women were appointed to provide specialist knowledge on women's issues (femocrats). Hester Eisenstein (1990; 1996), Marian Sawyer (1990) and Anna Yeatman (1990) have provided insightful accounts of the achievements and tensions between Australian femocrats and women's organisations. These analyses recognise the fine line walked by femocrats between their open commitment to feminism and their institutional loyalties. In walking this line, they often disappointed those women on the outside who had pinned their hopes for change on them. In spite of these tensions, femocracy is an example of putting in place interlocking implementation chains. Eisenstein explains how such chains work: 'As leader of OSW [Office of the Status of Women], Anne Summers reported formally to her department head, but because of her political connections and her friendship with Susan Ryan, could occasionally gain direct access to the Prime Minister.' (1996: 47). In an earlier work, Eisenstein (1990) commended the power that femocrats can evoke by forming alliances with traditional bureaucrats whose interests run parallel to their own. Forming an alliance with the Prime Minister must be seen as the implementation of Eisenstein's principle at the commanding heights.

Hawke's strategy from the beginning was to build and keep the consensus and co-operation between business, government, opposition, women's groups and trade unions through proposing a piece of gentle and loose legislation that took care of everyone's needs and worries. In so doing, he linked unlikely actors together in a co-operative exercise and made it possible for joint action by people with different underlying motives.

The compromise involved in taking care of everyone's needs does seem to lead inevitably to 'an affirmative non-action Bill'.⁴¹ The legislation has a major redeeming feature, however. A second type of consensus was embedded in the bill, the consensus that the workplace should be empowered. Employers were given the freedom to identify their own problems and solutions as long as they did so in consultation with employees, particularly women.⁴² The legislation mandated the kind of consultation that was happening among an elite at government level should be duplicated in every workplace in Australia. This was to be the key to changing workplace culture.

In summary, at the highest level of government, traditionally conflicting interest groups were brought together as members of an elite group to guide the introduction of affirmative action into Australian workplaces under the consensus umbrella of equal opportunity. While the tensions and strains of the group are not to be underestimated (Ronalds, 1990; Sawyer, 1990), different players were given a voice, co-operation was maintained, legislation was drafted and the disparate interests of conflicting groups were heard. To the disillusionment of many feminists, the Affirmative Action Bill did not cut across the goals of the business community. The bill had a dual function: to increase social justice and profit through helping business make better use of women in the workforce. The legislation was packaged to achieve a new and somewhat controversial goal (gender equality), at the same time as reinforcing a widely held and established goal (better business practices). In this way, the bill succeeded in rendering opposition to anti-discrimination measures on business grounds irrelevant. The outcome was that an Affirmative Action Bill was enacted by parliament with bipartisan support. This latter strategy illustrates the principle of institutional redundancy: that is to say, that if an institution is multi-purposed, each purpose can serve as a backup for the other. Under such circumstances, newly designed institutions can find a wide support base and have some protection against being prematurely dismantled.

The AAA did not provide answers for workplace discrimination. It mandated the asking of questions, but this was not going to happen without strategically placed pressure from outside organisations and well distributed informational bases for finding and implementing solutions. What was offered to those wishing to see workplace reform through this loose, gentle and weak legislation were four important levers for implementing social change:

- 1 spreading the message through the community that there was a *consensus* among politicians, business representatives, trade union officials and women's groups that workplaces in Australia should support equal employment opportunity practices. As Senator Baume

noted: 'One of the requirements for the success of this legislation is that it receive community acceptance.'⁴³ Consensus at the more abstract level of the overriding principle of equal opportunity provides a sufficient base for acceptance. With such an umbrella, members and groups in civil society have (a) a reason to engage in the change process, (b) a comfort zone for expressing disagreement and engaging in dialogue with each other, (c) a basis for linking practices across institutions, and (d) a rationale for sharing ideas across disparate groups.

- 2 paving the way for the *empowerment* of civil society to voice concerns and propose their own solutions. The legislation gives employers, employees, trade unions and women's groups an opportunity to participate actively in changing their own workplace culture. Political theorists' notions of communicative democracy (Young 1990) and deliberative democracy (Dryzek 1990) are given practical expression in this aspect of the legislation.
- 3 using the *redundancy* principle to provide multiple reasons, preferably both conservative and liberal, for changing work practices that are unfair to women. Institutions need to be set in place that serve a number of purposes and that advance new agendas while reinforcing old, uncontroversial ones. When different interest groups are guaranteed a voice in policy development and implementation, courses of action can be negotiated that produce win-win solutions. There is no reason to assume that one agenda (for example, economic efficiency) will drive out the other (for example, social justice). Building momentum for change depends on harnessing multiple agendas to one unified course of action.
- 4 nurturing alliances between key groups in civil society so that knowledge and understanding of discriminatory practices can be spread along and across interlocking implementation chains. The secondment of staff from the business sector to the Affirmative Action Resource Unit exemplified this process.

Implementation issues

The time of the passage of the Affirmative Action Bill through the Senate was the time for commencing the orchestration of the implementation of the legislation. This did not happen to the extent necessary to capitalise on the opportunities created by the consensus of the parliament. This message should have been shared with civil society, those that made up the business community, the employees, trade union members and citizens. Instead the co-operation and commitment among the key players disappeared from public view. At a time when resources should have been directed toward informing the public of a new program of

workplace reform, the task of engaging civil society was left to the initiative of the media.

The role the media performed was to disperse cynicism and fear through the community by means of reports of dissension. Fewer than half a dozen stories appeared in the *Age*, the *Sydney Morning Herald*, the *Australian*, the *Australian Financial Review*, and the *Canberra Times* in the week either side of the passing of the AAA and all conveyed stories of fears, conflict and resistance. The centrally important story, that the government and the Opposition believed that women were not getting a fair go in the workplace and that they supported the legislation for this reason, was notably absent. As a consequence, the security and the sense of involvement that civil society needed to play its role in workplace reform was non-existent. People were left ignorant, confused and disinterested. Five years later, they were still ignorant and confused. Managers did not understand the legislation, many did not recognise a problem, and employees didn't know the legislation existed (Braithwaite 1992; Powell and Russell 1993; Victorian Trades Hall Council 1993).

The second lever of institutional redundancy was better implemented due to the efforts of the Affirmative Action Agency and its director. Women's traditional roles have been kept intact for so long by a multitude of institutions all pushing in the same direction of subservience and dependency: the family, the workplace, education, religion, marriage, even the romantic novel. It makes sense, therefore, that to change both women's and men's behaviour, chances of success are higher if there are a host of institutional reasons for doing so. The consensus forged between government and business allowed the link to be made between good business practice and affirmative action. Maintaining the links between these institutions was the success story for the Affirmative Action Agency in its first five years of operation (Braithwaite 1993). Where strong human resource management practices were in place so too were embryonic affirmative action programs. Where they were not, affirmative action remained on the shelf as a report to be filled out for the government once a year.

The principles of consensus on equal opportunity, empowerment of civil society and institutional redundancy imply homogeneity in attitudes and actions that is neither intended nor deemed desirable. The model that is being proposed is one that tolerates, indeed encourages, diversity under the umbrella of equal opportunity. The important principle for the transmission of a new culture is that different groups interlock with other groups and not that they are so identical that they overlap. Mark Granovetter (1973) represents this idea as the strength of weak ties. Those on the fringe of a group can be of greater value than those who are central players because they are often influential in other groups and provide a

bridge to such groups. Interlocking implementation chains may bring together, for instance, radical feminist groups with a radical environmental group to share their ideas on how work can be organised more fairly for women. Radical environmental groups may share their understandings with mainstream environmental groups. These, in turn, may influence private industry and, ultimately, the most conservative organisations in the country. The notion of interlocking implementation chains is not that radical feminists will share their vision directly with conservative CEOs, but rather that the ideas will percolate across this seemingly impenetrable divide through intermediaries that have the trust and respect of groups that are closer to them in outlook and identity.

The usefulness of these principles was examined empirically through interviews with a random sample of 153 EEO contact persons in 1992 (Braithwaite 1992). One of the goals of the study was to identify pockets of success where the legislation was being used to achieve substantive compliance. These cases were contrasted with those in which compliance was procedural (mandated steps were in place but no workplace change had occurred) and where the legislation was being ignored (a report was lodged revealing little activity of any kind).

Compliance of a procedural and substantive kind was found in companies which professed a commitment to the spirit of the legislation and which believed the legislation could produce favourable business outcomes. In contrast, companies which had reported little activity of any kind saw the legislation as something to be resisted at all costs and as having nothing to offer business. These data demonstrate that the principle of redundancy, appealing to both profit and social justice in the legislation, was a factor in moving companies beyond the posture of resistance. Needless to say, moving beyond procedural compliance to substantive compliance involved a concern about sex discrimination that went beyond the profit motive.

One path to substantive compliance was based on an ideological commitment to affirmative action within the company, mainly on the part of the EEO officer. Not surprisingly, these EEO officers perceived themselves to be more committed than management, but the fact was that change was taking place and management was not obstructing the change completely. The EEO officers tended to be well connected, particularly with staff in the Affirmative Action Agency. This was a story of a group of highly committed women, sharing an ideology of equal opportunity which had been legitimated by legislation (value consensus). Furthermore, the legislation had empowered them to bring equal opportunity to their workplace. Their links with the staff of the Affirmative Action Agency were personal and often strong. Under the directorship of Valerie Pratt, the Affirmative Action Agency acted constructively to

strengthen ties with co-operating companies through sponsoring, with the *Business Review Weekly*, annual awards for best practice (Affirmative Action Agency 1992a). Employers were thereby rewarded for doing the right thing and supporting their EEO officers. Furthermore, some businesses carried their citizenship responsibilities further, advising other companies on various aspects of their affirmative action programs. Legitimation through value consensus, empowerment, and interlocking implementation chains were all evident in these high profile, centrally located workplaces, as was institutional redundancy. Institutions of good business practice and of affirmative action had become so intertwined that competition was rife for having a workforce that properly valued and retained its female workforce. It is here that we see innovation. These companies are the pathfinders for the rest of the business community.

The second way to substantive compliance was interesting because it did not involve high commitment to either the Affirmative Action Agency or the legislation. These links were irrelevant to implementing change. The principles that emerged to explain progress were value consensus and employee empowerment. Taking this path were workplaces where there was a belief that equal employment opportunity should be prioritised and that the women themselves knew how to do it. Change was rising out of grassroots support and peer networks. There was no evidence that management was particularly knowledgeable about such matters nor were they concerned. Of considerable importance was the management style in these organisations. There was a commitment to having good employee relations and open communication in the business. In other words, these organisations were managed with the intention of being open to new ideas. Management could, of course, squash any of the activities of the women if they so desired, but there appeared to be trust that the women would not hurt the company. In this sense, the redundancy principle seemed to be at work in that equal opportunity was not regarded as incompatible with the organisation's goals. An interesting lever for change for this group of women remained unrecognised by them. The Affirmative Action Agency should have been able to help them influence or consolidate their work with senior management. Unfortunately, the women did not feel affiliated with the agency. Their networks were local, and in their view, agency staff visited only to talk with the 'boys upstairs' (Braithwaite 1992).

Future directions

In spite of these success stories, I am not claiming here that dramatic progress has been made as a result of the AAA, but rather that opportunities for change are there for those who can mobilise co-

workers to reconsider the ways in which work is done. The need for women to find their footing in workplace negotiations has loomed large with the demise of Australia's central wage-fixing system. Concerns have already been voiced about the way in which 'the move to individualise and re-privatise work relations will exacerbate gender inequities in the workplace and re-inforce work-home relations oppressive to women' (Bennett 1995: 142). Such fears may be realised, but strategies are available and progress has been made toward setting up the apparatus that is needed so that women's voices can be heard and accommodated.

Least used for building support for change has been consensus on equal opportunity. Too often it has been dismissed as empty rhetoric, rather than as a framing device for bringing people together to decide upon a workplace action plan. It remains the most compelling argument for getting the Australian workforce, men and women alike, engaged in the debate and in the change process. In the case of women working at the grassroots level, the message of consensus surrounding equal opportunity has been shown to work well. But it should have worked better. Recently, we have seen greater efforts on the part of the Affirmative Action Agency to sell its programs and promote its consensus-based activities. In addition to co-operative ventures with the business sector such as the Business Council of Australia, the Confederation of Australian Industry, EEO practitioner associations, human resource management groups and business schools (*Affirmative Action Agency Annual Report 1991-92*), there are increasing examples of efforts to reach a broader cross-section of women and men in the community. The agency has devoted considerable efforts to developing closer relationships with the media to increase exposure to ideas for workplace change (*Annual Report 1994-95; Canberra Times* 5.12.1995). Magazines, such as *New Woman*, carry regular features on women and work, which set out reasons for the need for change, suggesting options for organising workplaces so that they are more gender-friendly and productive, and empowering women to be pro-active in the change process. Such steps to engage women and men who are not part of corporate elite groups are long overdue. Contrary to legislative intent, both women and men have been left in a state of ignorance about the legislation. Yet it is difficult to see how any meaningful change can be accomplished without their inclusion and participation.

Selling the message of national commitment to equal opportunity is one way of bringing employers and employees together to discuss an agenda for change, and the argument presented in this paper is that it still has not been done well enough to capture the imagination of most Australians. What has been done exceptionally well, however, is setting up the interlocking implementation chains at elite levels through the

principle of redundancy: implementing the affirmative action legislation is not only being fair to women, but is good management practice. The first five years of the operation of the act saw affirmative action programs being hitched to the cart of good management practice, so much so that some were critical that social justice concerns were being compromised too much (Burton 1991; Poiner and Wills 1991; Bacchi 1994b; Braithwaite 1994). Undoubtedly, there remains some truth in these criticisms. But a radical agenda for workplace change is of limited usefulness if supporters are not signing up to implement it. The actions of the Affirmative Action Agency were strategic, given their small numbers and their insecure future, and they have paid off handsomely. More recently, the influential Karpin Report (Industry Task Force on Leadership and Management Skills 1995), a comprehensive industry-based three-year review of leadership and management skills, presented a surprisingly critical and frank account of Australian managers' performance. Management was accused of poor leadership and lack of vision, of ignoring problems of discrimination and not making the most of the diversity of its workforce. The release of such a report, which has confirmed concerns about the poor implementation of the AAA, shows the potential power of both principles of redundancy and interlocking implementation chains. As a result of linking competent management with affirmative action initiatives, the traditional naming of non-compliant companies in parliament assumes new significance. The message that has been given out since the Karpin Report is not a nostalgic one about a few remaining bastions of male chauvinism. Instead, being named for non-compliance conveys a public message about bad management and poor leadership.

To this point in the legislation's brief history, the major achievement has been the setting up of chains of influence that can serve as carriers of social change. What is carried along these chains, however, remains to a considerable extent bereft of input from the majority of men and women whom the legislation was meant to serve. Enterprise bargaining offers the first major challenge to men and women to co-operate in a push for family-friendly work provisions⁴⁴ and for a workplace that allows women to contribute their special skills from the lowest to the highest levels. The task for the next decade is to ensure that the Affirmative Action legislation is understood, used and owned by Australian citizens from a broader base. While it is guarded protectively by elites, it can never achieve its potential for cultural change in the workplace.

Notes

- 1 Special thanks to Moira Gatens, Deborah Mitchell and Joan Eveline for their helpful comments and constructive criticisms on earlier drafts of this manuscript, and to Janine Bush for her research assistance.
- 2 Commonwealth Parliamentary Debates (CPD), House of Representatives, HR, 10 April 1986, vol. 147 at 1979.
- 3 CPD, HR, 10 April 1986, vol. 147 at 2071.
- 4 CPD, Senate, S, 20 August 1986, vol. 116 at 126.
- 5 Mr Slipper referred to the naming in parliament of companies that refused to go along with the government's plans as shades of McCarthyism (CPD, HR, 10 April 1986, vol. 147 at 2066). Senator Knowles expressed the view that being named in parliament was another example of 'big brother creeping into our daily lives' and it would be a 'brave employer who dares defy the government' (CPD, S, 20 August 1986, vol. 116 at 183); and Senator Short asserted that the business community did not support the sanction of being named in parliament, a sanction which was non-trivial because it impacted on one's standing in the community (CPD, S, 22 August 1986, vol. 116 at 366).
- 6 CPD, S, 20 August 1986, vol. 116 at 177-178.
- 7 CPD, S, 20 August 1986, vol. 116 at 128.
- 8 CPD, S, 20 August 1986, vol. 116 at 129.
- 9 CPD, S, 22 August 1986, vol. 116 at 316.
- 10 CPD, HR, 10 April 1986, vol. 147 at 2067.
- 11 CPD, S, 22 August 1986, vol. 116 at 379.
- 12 CPD, S, 22 August 1986, vol. 116 at 378.
- 13 CPD, S, 22 August 1986, vol. 116 at 378.
- 14 CPD, S, 22 August 1986, vol. 116 at 338.
- 15 CPD, S, 22 August 1986, vol. 116 at 309.
- 16 CPD, S, 22 August 1986, vol. 116 at 337.
- 17 CPD, S, 22 August 1986, vol. 116 at 317.
- 18 CPD, S, 22 August 1986, vol. 116 at 317.
- 19 CPD, S, 22 August 1986, vol. 116 at 317.
- 20 CPD, S, 8 December 1992, vol. 157 at 4362.
- 21 CPD, S, 22 August 1986, vol. 116 at 366.
- 22 CPD, S, 12 June 1986, vol. 115 at 3839.
- 23 CPD, S, 12 June 1986, vol. 115 at 3839.
- 24 CPD, S, 22 August 1986, vol. 116 at 375-377.
- 25 CPD, S, 22 August 1986, vol. 116 at 406.
- 26 CPD, S, 22 August 1986, vol. 116 at 399-403.
- 27 CPD, S, 22 August 1986, vol. 116 at 339.
- 28 This is not to suggest that more reasonable accounts did not appear in the press. For example, The *Sydney Morning Herald* (2.6.84) reported the business community's recognition that it was in their interests to make greater use of their female workforce and the *Australian Financial Review* (25.6.84) reported 'no "big stick" approach to affirmative action'. Such stories, however, were dominated by accounts of disruption and conflict.
- 29 CPD, HR, 9 April 1986, vol. 147 at 1930.
- 30 CPD, HR, 9 April 1986, vol. 147 at 1925.
- 31 CPD, HR, 10 April 1986, vol. 147 at 1976.
- 32 CPD, HR, 10 April 1986, vol. 147 at 1981.
- 33 CPD, HR, 10 April 1986, vol. 147 at 1987.

- 34 CPD, HR, 9 April 1986, vol. 147 at 1930.
- 35 CPD, HR, 5 June 1984, vol. 137 at 2870.
- 36 CPD, HR, 5 June 1984, vol. 137 at 2872.
- 37 CPD, HR, 5 June 1984, vol. 137 at 2872.
- 38 CPD, HR, 5 June 1984, vol. 137 at 2874.
- 39 CPD, HR, 9 April 1986, vol. 147 at 1928.
- 40 CPD, HR, 9 April 1986, vol. 147 at 1933.
- 41 Senator Baume attributed this description to Senator Haines, CPD, S, 22 August 1986, vol. 116 at 376.
- 42 Senator Baume stated: 'It is our belief that the appropriate people with whom consultations should be carried out are the employees.' CPD, S, 22 August 1986, vol. 116 at 399.
- 43 CPD, S, 22 August 1986, vol. 116 at 376.
- 44 *Age*, 1.11.1997.