

Management's rapacious quest for control: A case study of affirmative action programs for academics

Introduction

Since December 1983 universities and colleges of advanced education in New South Wales are required by Part 1XA *Anti-Discrimination Act 1977* to research the extent of discrimination and prepare an equal opportunity management plan

- (a) to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex, marital status and physical impairment; and
- (b) to promote equal employment opportunity for women, members of racial minorities and physically handicapped persons.

(S122C *Anti-Discrimination Act 1977*)

Federally, higher education institutions were required to commence on 1 August, 1986 the development and implementation of an affirmative action program, ss7(1)(a), 6(1) *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*. An affirmative action program

- is a program designed to ensure that —
- (a) appropriate action is taken to eliminate discrimination by the relevant employer against women in relation to employment matters; and
- (b) measures are taken by the relevant employer to promote equal opportunity for women in relation to employment matters.

(S3(1) *Affirmative Action (Equal Opportunity for Women) Act 1986*)

The basic contents of an affirmative action program are set down in S8(1) of the Act. Paraphrasing this section, an affirmative action program requires a relevant employer to issue a statement stating that an affirmative action program is being implemented; appoint a person, or persons, to take responsibility for the program; to consult with employees and trade unions; collect and record relevant statistical information; to consider policies and examine practices; set objectives and monitor and evaluate the program. Section 8(2) provides for the inclusion of other provisions that are not inconsistent with the contents of the affirmative action program outlined in S8(1) or the purpose of the Act. Universities and colleges of advanced education must comply with both Acts, as the requirements of Part 1XA *Anti*

Discrimination Act 1977 are not inconsistent with S8(1) or the purpose of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*.

Prior to this legislation, Commonwealth legislation made direct racial discrimination an offence, S9 *Race Discrimination Act 1975*. Direct and indirect discrimination on the grounds of sex, marital status and pregnancy was also an offence under ss6, 7, and 8 *Sex Discrimination Act 1984*. In New South Wales, the *Anti-Discrimination Act 1977* made direct and indirect discrimination on the grounds of race, age, sex, marital status, physical impairment, intellectual impairment and homosexuality an offence. These Acts did not outline any statutory requirements to reduce and eliminate systemic discrimination, though employers were held to be liable².

The *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* and the amendment to the *Anti-Discrimination Act 1977* in 1980 (Part 1XA) represented a significant legal and policy development in the field of discrimination. The Acts focused on the problem of systemic discrimination and introduced compulsory practices aimed at reducing, if not eliminating, systemic discrimination.

This paper assesses whether the objectives of this new legislation are being realised within the academic structure of one university.

The research problem

An Equal Opportunity Panel was established in November 1983, with an Equal Opportunity Co-ordinator appointed in September 1984. In October 1984, the University published its Equal Opportunity Policy Statement and foreshadowed an Equal Employment Opportunity Management Plan in the area of recruitment, selection, training and staff development, promotion, transfer and conditions of employment. This was published in 1987.

During this period, it was evident, as a member of the University, that a number of developments were taking place in this area. First, rumours were rife about the possible impact of the new legislation. The publicity attracted by anti-discrimination cases, particularly *O'Callaghan v Loder & Anor*

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(1984) EOC 92-023, *Metwally v University of Wollongong* (1984) EOC 92-030, *Hill v Water Resources Commission* (1985) EOC 92-127, and disputes within the University, were sufficient to guarantee that affirmative action, anti-discrimination and equal opportunity were issues within the University. Second, there appeared to be a basic lack of understanding of what was required or what was meant by affirmative action, discrimination and equal opportunity. Third, ad hoc decisions were being made under the rubric of complying, or being seen to comply, with the purpose of such legislation³. Fourth, it was being rumoured by some that positive discrimination was taking place in the recruitment and promotion of employees on the basis of sex, while ignoring other criteria or qualifications necessary for the task of promotion.

At the time of conducting the research in 1988, four years had passed since the Equal Opportunity Policy Statement was published, and, two years since the Federal Statutory requirements set down by the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*. Furthermore, the University had begun the process to amalgamate with other institutions. There was a virtual silence on staffing, apart from assurances that no one would be economically disadvantaged. The Equal Employment Opportunity Management Plan, or the Affirmative Action Program, for the new University was not raised publicly during 1988, despite Equal Opportunity (EO) Co-ordinators working in the institutions to be amalgamated. It suggested that at the early and possibly the most formative stage of the amalgamation process they were being ignored.

It seemed an appropriate time to consider what had taken place at the institution level and, at the same time, assess the understanding of the issues by those who are, at least in the formal sense, committed to affirmative action, equal opportunity and a non-discriminatory work environment; namely, the executive of the local academic union. The research is explorative and is designed to seek some understanding of the issues raised by the following questions.

- What has been the formal institutional response to affirmative action, equal

opportunity and discrimination?

- Have resources been allocated to achieve the stated strategies?
- What is the basic understanding of affirmative action, equal opportunity and discrimination by the local academic union executive?
- How does the local academic union executive assess the University's response to the situation?
- What issues are perceived by the executive of the local academic union in this area by the proposed amalgamation?

Assessment of questions 1 and 2 is based on the management plan and 3 to 5 is based on interviews with four members of the executive and one member of the union that has played a pivotal role in the union and in the University in promoting equal opportunity⁴. Overall, the research was informed by discussions with the EO Co-ordinator.

The formal institutional response

The Equal Employment Opportunity Management Plan is divided into three volumes. Volume 1 is concerned with *Personnel Policies, Procedures and Practices*, volume 2 *Strategies* and volume 3 with *Official Documents* supporting volumes 1 and 2. At first glance it is an impressive document.

Volume 1 is clearly misnamed. It is a statistical profile of staffing at the University that requires a calculator if the reader is to make any sense of the data provided. It presumably complies with S8(1)(e) *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* which requires

the collection and recording of statistics and related information concerning employment by the relevant employer, including the number of employees of either sex and the types of jobs undertaken by, or job classifications of, employees of either sex;

and s122J(c) *Anti-Discrimination Act 1977* for the collection and recording of appropriate information. The information contained in volume 1 did not give the totals and sub-totals of the number of staff and category of staff by sex at the University. Departmental information was listed in a long list of positions, with no categorisation and sub-totalling of the number of males and females in particular positions within departments, faculties, across faculties or the University. It was simply a series of blanks, one's, two's, three's, etc. by rank and sex.

The plan presented the results of two questionnaires sent to all staff and sometimes made comparisons with a staff profile whose source was unclear. The staffing profile referred to in volume 1 did not match the raw data provided in volume 1. On the basis of the raw score data contained in volume 1, 72 staff members were not included in the

Table 1
The Number and Percentage of Female and Male Staff in Academic Faculties at the University in 1984 by number and percentage with positions of senior lectureship and above and lecturership and above.

Faculty	Female		Male		Total No.
	No.	%	No.	%	
1. Senior Lectureship and above	2	2.9	67	97.0	69
Lectureship and above	14	11.1	112	88.9	126
Total	84	34.2	162	65.8	246
2. Senior Lectureship and above	0	0.0	34	100.0	34
Lectureship and above	2	3.8	52	96.2	56
Total	39	33.0	79	67.0	118
3. Senior Lectureship and above	1	4.1	23	95.9	24
Lectureship and above	5	10.2	44	89.8	49
Total	35	33.6	69	64.4	104
4. Senior Lectureship and above	0	0.0	6	100.0	6
Lectureship and above	0	0.0	13	100.0	13
Total	6	17.1	35	82.9	41
5. Senior Lectureship and above	1	4.5	21	95.5	22
Lectureship and above	3	8.6	32	91.4	35
Total	69	33.5	137	66.5	206
6. Senior Lectureship and above	2	4.0	47	96.0	49
Lectureship and above	5	8.0	57	92.0	62
Total	55	27.4	146	72.6	201
All Faculties					
Senior Lectureship and above	6	2.9	198	97.1	204
Lectureship and above	29	8.5	310	91.5	339
Total	288	31.5	628	68.5	916

survey. Furthermore, 78 respondents on their list of staff members had left the campus by the time the questionnaires were distributed. A 70% response rate was claimed covering an estimated 64% of staff. It was sometimes unclear when the questionnaire survey or the staff profile was being referred to. This was significant as the survey data was used as the main descriptor of staff characteristics, despite showing some considerable differences with the raw data contained in volume 1.

Proportionally more females answered the survey questionnaires, with a considerable variation in the response rate, ranging from 21.6% to 77.6%, between academic departments and faculties. The proportion of female responses also increased among respondents in higher academic positions. Consequently, the plan, by using the survey data for its sex profile of staff, helped to reduce the impact of sex on the profile. A truly ironic result, when the data was being collected to provide the basis for strategies to develop equal opportunity and affirmative action programs. As one respondent noted,

I thought it was hopeless. I was very angry about it at the time. The database was hopeless. I could not believe that a University could produce such rubbish. (Respondent A)

The data replicated previous findings⁵ in that females were grossly under-represented in academia and were more likely to be employed in the lower paid and lower status positions. This is illustrated in the following table 1. This data represents the academic profile at November 1984. It has taken three years for the University to produce and print the management plan. No update or annual report was available at the time of the research, though the first annual report was at the draft stage.

These figures are clear evidence that systemic discrimination exists. Females comprised 31.5% of those working in academic departments, while only 23.2% were in academic positions of lecturer or above. Secretarial staff was 100% female. Females were more concentrated in casual positions, technical rather than senior technical positions, etc. Table 1 suggests that female academics were virtually non-existent in some Faculties. When represented, they were generally in the lower paid and lower status positions.

Such obvious findings are hidden in volume 1 by the method of data presentation and the reportage of questionnaire responses that focus more on the racial and marital status of employees. Such matters are important, but the imbalance indicated in Table

1 is easy to ignore, as cross-tabulation by social characteristics often hides the fundamental fact that the sample is segmented in the first instance.

In 1984 there were 3 professorial positions (all associate professorships) held by females out of 76 positions. A similar number of senior lectureships (3) were held by females out of 125 positions. Females held 23 lectureships out of 170 positions. Unfortunately, volume 1 does not present this data. Rather it tells us that of those who responded to the survey, 70% were married, 71% were Australian-born, 5% were Aborigines and that the

awareness of staff generally of the principles and practices relating to Equal Opportunity issues was fairly limited (based on observing three selection committees).

The report also claimed, on what basis we are not told, that

Members of the Equal Opportunity Panel; Staff Office, staff involved in union activities; and those whose personal experiences had caused them to become involved in Equal Opportunity issues, were developing skills for an increased awareness.

If the matter was not so serious one could laugh and dismiss such mumbo-jumbo. This is fact-finding by a management that extols the virtues of research and filled volume 2 with strategies to overcome the problems uncovered by their fact-finding. At no stage does the plan summarise the problems or relate the strategies to any particular fact found by the survey. It is not intended to suggest that the data is totally useless. It is important to know that only 9.5% of full time academic positions are held by females, that 55% of females resigned from positions because of childbirth and that a quarter of female casual workers have been in that position for over 10 years (survey data).

The first and major issue is that females simply do not have positions in academia. The few positions they held were mainly at the lecturer level or below. Nevertheless, we are told that in terms of promotion that

There is no evidence that women apply less frequently in any particular Faculty, nor that women are promoted less frequently in any particular Faculty.

On the basis of the findings in table 1, it requires no one in Faculty 4, and possibly one female in any other Faculty, to apply for promotion, or attain promotion occasionally, to prove that statement correct.

The management responded to its data collection by specifying that affirmative action is not designed to establish preferential treatment, rather it is aimed at identifying and eliminating institution barriers. It is oriented, they claimed, to results, but no quotas or rigid forms of reverse discrimination are to be applied. However, steps are

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necessary to relieve the effects of past discrimination, while not departing from the principle of selection on merit. The principle of equal opportunity presented by management conforms with s3(4) *Affirmative Action (Equal Employment Opportunity for Women) 1986*. It is that the best qualified is to be selected, while everyone has a right to be considered for a job for which one is skilled and qualified. Is this the "marshmallow substance of affirmative action"⁶ and its major weakness in attempting to address systemic discrimination?

The plan details and claims to co-ordinate affirmative action programs in the areas of recruitment, selection, training and staff development (academic staff were excluded from training and staff development). In reading the plan there is nothing immediately objectionable in it. It lays great stress on data collection — if it is anything like its first effort it will waste resources — and assigning responsibility to someone down the management line. Euphemisms abound, such as soon as possible, as soon as practicable, ongoing, continuing, continue over time and as resources become available for target dates. Evaluation is also handed down the line, especially to the Equal Opportunity Co-ordinator, or to a repeat survey and endless calls for reports/reviews.

To illustrate with an objective and strategy that is more specific than most. Strategy B1.1 has the objective of increasing "the employment ratio of women in academic areas in which they are under-represented". In short, this means all career positions. The specific action to be taken is to acquaint all staff with EO policy, to check wording of advertisements and examine existing barriers preventing female graduates from pursuing higher degrees. What is to be done when we find out about the barriers is not considered. Responsibility for this task lies with the EO Director, Heads of Departments and staff, with periodic checks by Staff Office and the EO Co-ordinator on advertisements. The EO Co-ordinator is also to consult with students, presumably potential female graduates. All this will be subject to evaluation in a re-survey after two years. The first survey took three years to get into print and no new survey has, as yet, been conducted.

Eight years since the last survey would be a generous estimate before we find out about this objective. This is despite the statement that the target date is to begin immediately. What hopes should one have for objectives

that have as soon as practicable as the target date and an appropriate survey for evaluation. It is evident that the plan is simply that, a plan.

One has to seriously question the value of statutory requirements set down for affirmative action and equality of opportunity programs if they can be complied with in this way. As one respondent indicated, they were so obsessed with planning the plan that action in the area virtually ceased.

While you are making a plan you are not doing activities in the community at large, you are planning for it. A lot of time and energy went into preparing the plan. To tell you the honest truth I see very little of that being implemented. (Respondent B)

Volume 2 contains 51 objectives which clearly require resources to implement them. The strategies outlined to achieve these objectives stress the day-to-day interaction and decision-making that takes place in the recruitment, selection, training and staff development and promotion of staff. Thus failure to redress the imbalance will be seen as failure by some staff in the system and not management. Tasks have been added on to existing roles and job specifications, while at the same time budgetary cut-backs have led to a real reduction in resources.

The plan is an example of this lack of resources. It was begun in 1984 and took three years to complete. Management data files were so inadequate that the researchers had to manually extract the data for the staff profile. Management partly resourced this survey through the employment of casual and student labour. In an environment that has some excellent researchers, it is remarkable that the survey was so poorly resourced, took three years to complete and was so inadequately presented. Furthermore, the EO Co-ordinator has been assigned numerous tasks under this plan, many of them time-consuming and needing resources. She is expected to carry out these tasks, and the normal daily routines of the office, with a secretary. Furthermore, there appears to be no basis to the strategies outlined by management in terms of a realistic appraisal of the serious level of systemic discrimination. It is true that non-discriminatory advertisements, grievance procedures, the removal of sexist language, re-educating staff, etc. needed to be addressed. Whatever the impact they might have on direct discrimination, it is unlikely to appreciably reduce covert and systemic discrimination unless structural changes are made.

Response to the Equal Employment Opportunity Management Plan

Respondents on the local executive of the academic union were in agreement that equality of opportunity meant equal access

(respondent A) and "to make sure qualified candidates of certain social categories are not discriminated against" (respondent E). While there was agreement on the meaning of equal opportunity there was some divergence on its significance. One respondent saw equality of opportunity as the maximum position to take, another was extremely positive, while the other respondents were considerably more circumspect about the efficacy of equality of opportunity in a system where actual equal opportunities are hard to locate.

(It is becoming obvious, even when you say there will be no discrimination on the grounds of race, gender or whatever, not as many women for instance come up for appointment and not as many women are able to publish as often, so they then might be discriminated against in promotion procedures, even though these promotion procedures say they are talking about equal opportunities. (Respondent D)

The divergency of opinion and understanding was more apparent when affirmative action was considered. One respondent was implacably opposed to affirmative action, as it was interpreted as

a deliberate attempt to introduce quotas for selected groups in hiring, promotion and so forth . . . There are members, myself included, where I can fairly assure you would be opposed to an AA program . . . It creates inequalities while it attempts to deal with others. I simply do not understand how a woman who grew up in (a wealthy environment), got all the privileges, private schooling and all the cultural advantages from being in a well-to-do family, why this person should have some priority in hiring over a man who comes from some outback nowhere . . . who had to battle his way up to get whatever he has got through sub-standard or cultural disadvantages. (Respondent E)

Another respondent (C) was in favour of affirmative action which "involves evoking policies whereby you encourage women to get qualified for positions and to be encouraged to apply for them". Affirmative action was interpreted as not implying quotas to which the respondent was opposed. Two respondents (A and B) placed more emphasis on restructuring the environment, but fell short of implying quotas. Affirmative action was, as Respondent A noted, designed to provide

Processes and structures that enable people of both sexes and different races to have a reasonable life experience as well as career prospects in the institution.

Finally, Respondent D was clearly in favour of quotas and interpreted affirmative action as promoting such a policy

It is not just if there were two equal appli-

cants for a job pick the woman, but go out of your way to positively encourage women into positions, which means that possibly if they are not quite evenly matched you would pick the woman.

Here then was a basic difference. On the one hand you had a member of the executive who felt that quotas were part of an affirmative action program and was opposed to them, while on the other hand another member of the executive felt that an affirmative action program required quotas. Neither position accorded with the plan's assessment of affirmative action, or, the legal meaning given to affirmative action in the Act⁷.

How the local executive responded to the issues of affirmative action, equal opportunity and discrimination also received a varied response. A recent member of the executive simply stated that the issues had not been discussed since coming onto the executive more than six months ago. Respondent D felt that the union movement in general had been

terrible about EO . . . It hasn't got very much to be proud of . . . though (their branch) has been somewhat better because of the influence of one union member who had taken up the cause.

Another respondent (A) felt that the union had been exceptionally active, and, in the area of individual grievances it could not be faulted.

Still, there was considerable pessimism about the staff and local union's approach to affirmative action and equal opportunity.

I mean we have got it on the books and we pursue it at every opportunity but there are in fact some other people on the executive, who shall remain nameless, who do not agree with it and don't see it as a priority and don't want to push it and don't do anything about it. (Respondent D)
I don't think the academic staff is very concerned about it, except members of the groups that are directly affected by it. (Respondent A)

All respondents indicated that the issue has not been raised recently. In fact, when asked what were the main issues they felt were significant in the University in this area, the response was very general. A few respondents noted that there was a need to get more women into positions of power; that there was conflict between the EO Unit and the union, and, management was trying to block union input in this area. No particular issue seemed to be of immediate concern.

Two respondents indicated that they had not read the *Equal Employment Opportunity Management Plan*. The remaining respondents could not recall its precise details. Nevertheless, it was criticised by four respondents as being a management plan that ignored the union. Two respondents felt that the plan basically accorded with union policy. One of those

respondents (C) objected to the fact that management was prosecutor, judge and jury. The respondent favoured an adversary approach and felt that management used the plan to shut out external accountability and the union. Nevertheless, that respondent was reasonably positive about the plan.

Oh I think they have made an honest attempt to address it. I am not criticising that. It is the very form in which it is set up . . . it is not the University's fault either, it is the legislation. They have done an honest job in trying to see that things are fair. (Respondent C)

In contrast to this critique that gave management an honest, if somewhat ineffective, role, the other respondents were not so positive.

One of the things that struck me at the time that it was absurd to think that one person could be employed to change the whole nature of the institution. In a way she is being asked to be a social engineer without any of the skills or backup or willingness to change. It struck me that the whole thing was monstrous. (Respondent A)

It is definitely a management plan. I was very disappointed with it. (Management and the University generally) see it as totally irrelevant. I think some feel slightly threatened by it and they go out of their way to make sure that the management plan is just a written document and has no teeth. (Respondent D)

To tell you the truth I see very little of that being implemented. The problem is they are not the right people to really implement the plan with force. (Respondent B)

There was considerable disappointment expressed, as respondents felt that the local union could play and should play (S8(c) *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*) a positive role in bringing about equal opportunity and affirmative action at the University. The one respondent opposed to affirmative action was not opposed to the management plan and felt the union should actively support the plan.

Four of the five respondents indicated, before being asked, that the relationship between the union and the EO Co-ordinator and Unit was not a happy one. They felt that she was anti-union, that she was part of management and was seeking to carve out a position by excluding or ignoring the contribution the union could make. It was recognised that she was structurally placed in an invidious position and exploited by management. Management, they claimed, stonewalled the local union by using the EO Unit as an excuse to avoid action, such as that it is a problem for them, and they are looking into it.

Basically, management is seeking to place affirmative action, equal opportunity and discrimination outside industrial relations,

It illustrates that good legislative intent can be displaced by management and that those who should be working together are placed on opposite sides.

while the union sees them as fundamentally industrial issues. Consequently, the poor relationship that has developed between the local union executive and the EO Unit has played into the hands of management. This was recognised by respondents. While anxious to co-operate, they felt that the EO Unit, by seeking to take over all grievance disputes and training mediators without informing them of what their union could provide, was simply playing into the hands of management. As Respondent B noted: Providing information may solve many grievances given that ignorance of institutional conditions often leads to problems.

It has just been constant conflict because the EO person wanted territory she was in charge of. She wanted the union to get the hell out of it. We got very stroppy about that (grievance procedures) because we don't think our members should be subjected to a path that will probably get them nowhere. You are simply going to management to say I have got a problem. We have taken a lot of initiatives that have ended up in the EO rubbish basket. (Respondent A)

One thing the union has tried to make clear to its members is that the EO Unit is a branch of the University administration. (Respondent E)

Hoped she would liaise and be an interface. That in fact has not happened. I think she needs to be re-educated in terms of what role the union can play. Ridiculous clash of who is to do what. (Notes that the union may also be anti-EO Unit.) (Respondent B)

She is in an invidious position because she is actually management and as management she can't rock the boat as much as there needs to be — we need to do that for her — but I don't think there is a commonality of interest there. It needs to be a radical position, but it is a co-opted position. (Respondent D)

Hidden within these comments is a genuine concern about the position that the EO Co-ordinator has been placed in by management. The criticism was not personal, but based on the position being part of management. As part of the management structure it was felt that it could not fight for structural changes that would question established management practices. Neither could it be an advocate for those having problems with management and other staff.

Finally, respondents were asked about the effect amalgamation might have on the present situation. The results were mixed. Two respondents felt that it might have a positive effect because they felt there was proportionately more females on the staff at the other institutions. Two respondents took the opposite position and felt that staff on short term contracts in the other institutions (mainly female) would be shelved, and, that the position of tutors at the University, who have a relatively high proportion of females, would be under threat. The remaining respondent felt that the introduction of more women into the University would be a positive step, but felt that it might lead to a backlash because of apparent differences in qualifications. It seemed that the other institutions recently promoted a number of female staff, particularly in areas where it has been difficult to get staff with post-graduate qualifications. It was felt by this respondent that there would be many highly trained females and males at the University who might seek to raise a grievance.

Discussion

This analysis has revealed a management plan that complies with the statutory requirements. It appears to be under-funded and hardly addresses the fundamental issue that females are grossly under-represented in the academic environment. It illustrates that good legislative intent can be displaced by management and that those who should be working together are placed on opposite sides.

The relationship between the local union executive and the EO Co-ordinator is a good example. Both are committed to the principles and objectives of the legislation. Both feel they have a positive contribution to make. Yet they are in conflict with each other. Why this is the case is not difficult to understand. Management has played, whether intentionally or not — it would seem to derive from their construction of reality as managers — a crucial role in this situation. They have used the EO Unit as the stumbling block. By keeping it under-funded and flooded with grandiose strategies, it has brought it firmly under its control. It is a smart administrative ploy. The legislation cannot prevent this, rather, it seems to have encouraged this development. By stressing the need for reports, plans, etc. management can devote its resources to the form of the legislation and not be unduly concerned about the content of what actually gets done.

This is unfortunate, as there is common ground between the local union executive and the EO Co-ordinator that, if given the opportunity, could be an effective force for change. Given management's approach, one would have to conclude that it is really not very serious about affirmative action and the reduction of systemic discrimination at the University. It is serious about complying

with the statutory requirements and been seen to be regarded as an affirmative action employer. Management clearly does not want to relinquish any control it might have over the workforce. The opposite has taken place. Grievances have now been largely taken out of the hands of the unions and placed within the EO Unit and the management structure. The question as to whether management is in the best position to determine the outcome of problems for which the management might be the cause is ignored. In an environment that prides itself on freedom, it surely is a master stroke by management to be accorded praise for such work. The recent 4% wage agreement confirms the managerial role in grievance mediation.

The State and the nature of our legal system also contributes to the ineffectiveness of these equal opportunity and affirmative action programs. Failure to comply with the legislation imposes little or no punishment. The employer may be named⁸, or referred to the Anti-Discrimination Board which has the power to issue recommendations⁹. The Minister also has the power to issue a direction under the State Act¹⁰. This is clearly inadequate to shift the hegemonic position of male administrators and academics into action. Until enough females and other categories of individuals who suffer systemic discrimination gain positions of power within the higher education institutions, they will basically be powerless to shift management into decisive and purposive equal opportunity and affirmative action programs.

The Australian legal system and the manner in which grievances can be processed further reduces the impact of the legislation in seeking to redress systemic discrimination. Australian law is predicated on an individual rights thesis¹¹ which trump collective goals¹². Consequently, it is largely impotent in attempts to rid communities of institutionalised discrimination. The legislation is imbedded within a legal structure that at the point of most conflict, when the educational and conciliatory role of the Human Rights and Equal Opportunity Commission and Anti-Discrimination Board fails to achieve a resolution, reverts to an individualised adversarial disputation at the Federal Court¹³, or, an inquiry by the Anti-Discrimination Tribunal where the *Royal Commissions Act 1923* applies¹⁴. Conciliation seeks to gain agreement on the unlawful nature of the Act, the right to reparation and prevent a repetition of the discriminatory practice¹⁵. At the Federal Court or Tribunal level the matter is privatised and collective goals are trumped. The public domain from which anti-discrimination legislation must draw upon, if it is to combat institutionalised discrimination, is downgraded. The legalism of the Federal Court and the Anti-Discrimination Tribunal, and its emphasis on individual rights filters down to the concilia-

tion phase. Obiter dicta by Justice Einfeld *Hall & Ors v Sheiban & Anor* (1988) EOC 92-227 at 77, 142 circumscribes the role of conciliators so that

These delegates are not free agents to pursue causes, and may not be advocates for parties within the Act's ambit, however honourable, justified or sympathetic they may feel in relation to particular matters being handled by them.

Conclusion

The results of this review of the equal employment management plan and affirmative action program as it affects academics at one University suggests that the basic intent of the legislation is not being realised. This is not to imply that there have been no improvements (even the critics recognise this to be the case) but that the potential for change foreshadowed by the legislation has not been realised.

Notes and References

1. I wish to express my appreciation to Margaret Thornton, Macquarie University Law School, who introduced me to the subject and gave me advice and encouragement to engage in this research. To retain confidentiality I cannot name my respondents, the EO Co-ordinator and other colleagues at the

University who made this case study possible. Their efforts have been greatly appreciated, as it is a research topic that could have had negative repercussions.

2. *M v R Pty. Limited and Anor* 1988 EOC 92-229 at 77, 173. (Followed *Hill v Water Resources Commission* (1985) EOC 92-127.)
3. To illustrate with a simple example from my own department. After recommending a male applicant for a lectureship (there was no female applicant), a decision had to be made about a recommendation for a tutorship. Before the discussion was opened, it was stated from the chair that we must select a female for our first choice because we had selected a male for the lectureship. This is the kind of response that has given affirmative action a bad name and fuelled speculation and critiques about the objectives of affirmative action programs.
4. This is a small sample, but time and resources were limited. The research was designed to be explorative and raise questions about the development of affirmative action and equal opportunity programs for academics at the University. Criticisms raised later about the inadequacy of the research underlying the management plan could also be levelled at this research. However, the aims, objectives and available resources were different.
5. Affirmative Action Agency, *Affirmative Action: Guidelines for Implementation in Institutions of Higher Education*, Government Publishing Service, North Sydney, 1987; B. Cass, M. Dawson, D. Tample, S. Willis and A. Winkler, *Why So Few? Women Academics in Australian Universities*, Sydney University Press, Sydney, 1983; H. Eisenstein, *Academic Freedom and Equal Employment Opportunity*, Address to EEO seminar, NSW Advanced Education Conferences, Sydney, 1983.
6. M. Thornton, 'Hegemonic Masculinity and the Academy', *6th Annual Law and Society Conference*, La Trobe University, Melbourne, 1988.
7. Ss 3 and 5 *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*.
8. S 19 *Affirmative Action (Equal Opportunity for Women) 1986*.
9. S 122R *Anti-Discrimination Act 1977*.
10. S 122S *Anti-Discrimination Act 1977*.
11. J. Rawls, *A Theory of Justice*, Oxford University Press, Oxford, 1973.
12. R. Dworkin, *Law's Empire*, Fontana, London, 1986.
13. S 25ZA *Racial Discrimination Act 1975*; S 82 *Sex Discrimination Act 1984*.
14. S 110 *Anti-Discrimination Act 1977*.
15. P. Pentony, *Conciliation under the Racial Discrimination Act 1975: A Study in Theory and Practice*, Human Rights Commission Occasional Paper No. 15, Government Printer, Canberra, 1986.

REVIEWS

The International scene

Clark, Burton R. (ed.) *The School and The University: An International Perspective*. Berkeley and Los Angeles: University of California Press, 1985; first paperback edition, 1988.

This work considers, in a most informative fashion, "... the relation between secondary and higher education in a way that can enlarge practical and theoretical perspectives and thereby possibly lead to greater insight." (p.3) While primarily concerned with the interacting influences upon one another of schools and higher education, it is also, inevitably, a book about who and how many get what sort of higher education. That is, it is about access.

Gaining access to higher education is not a simple, once-and-for-all process. Those who

don't reach the gate are obviously unable to pass through. Indeed, in many times and places, getting to the access point, via a full secondary education, has been tantamount to admission; such was the case in Australia for a century. Even in highly competitive and class-based systems, secondary education is often the hurdle: while relatively few working class English youths get close, once through the sixth form the working class student is only a little less likely than others to proceed to higher education. (Halsey, A.H., A.F. Heath and J.M. Ridge, *Origins and Destinations: Family, Class and Education in Modern Britain*. Oxford University Press, 1980, Ch. 10.)

Secondary education may control tertiary access through a range of formal, semi-formal, and informal mechanisms. Segmented secondary systems, with academic secondary schools (lycees, gymnasien,

grammar schools) the sole route to higher education, are today being replaced in many countries by comprehensives, but "streaming" or "tracking" may perform the function of pre-selection for tertiary access just as efficiently, if less visibly. So may that most informal of mechanisms, the differentiated equipment and expectations of nominally similar comprehensives in wealthy suburbs or decaying ghettos.

Attitude may be a more important determinant of access than any mechanism. Cummings' description (Ch. 5) of the much-vaunted Japanese system (to be more precise, the presumed outcome is widely admired) details its intricate prestige hierarchy of both secondary and tertiary institutions, batteries of severe examinations, and expensive coaching and private alternatives to public provision which all lead to a very high tertiary access rate. It also makes clear