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## Specialist Tribunals and Management Strategy: Reflections on the Impact of Anti-Discrimination Legislation in the Public Sector

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*Industrial relations research on management strategy has tended to ignore the influence of individual labour laws enforced by specialist industrial tribunals. This paper looks at the effect of a particular specialist tribunal, which enforces anti-discrimination laws, on managerial strategy in public sector organisations. It argues that the formulation and implementation of management policies are influenced by exposure to the activities of specialist tribunals, indicating the partial origins of managerial strategy in fear, and its gradual accretive nature.*

Management strategy has become a central concern of industrial relations research. Conforming with the broader tradition of industrial relations research, however, treatments of this subject have tended to neglect the impact of the state's dispute settling institutions on management strategy. To the limited extent that consideration has been given to these institutions, analysis has centred on the role played, in Australia, by the arbitration system. This can be attributed to the overt and pervasive influence of the arbitration system, a crucial factor distinguishing Australian workplace industrial relations from those in such other countries as the United Kingdom and United States. In terms of comparative analysis, however, other institutions common to many western countries may also yield crucial conceptual cues. One important set of institutions which have been neglected are specialist industrial tribunals which enforce individual labour laws.

In 1983, Hepple noted of British industrial relations that "the language and philosophy of individual legal rights have become increasingly pervasive" (p.393). This has been similarly true of Australia and New Zealand. The widespread emergence of anti-discrimination legislation has been one of the more overt forms of this expansion of workers' rights over a wide terrain which includes superannuation, promotion and disciplinary appeals, unfair dismissal and workers compensation. Yet those specialist industrial tribunals which are not involved in wage and salary determination remain almost completely neglected in industrial relations research. Many of these tribunals are quasi-judicial rather than arbitral, and engaged in enforcing statutory rights concerning specific aspects of employment relations. The public and political gaze has similarly rested heavily on arbitration bodies rather than these specialist tribunals. This may partly relate to a conceptual distinction between collective and individual issues and an accompanying assumption that individual employment rights and their enforcing

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institutions do not impinge on collective employment relationships (Thornthwaite, 1991: 17-19). Certainly though, in their residence with the individual worker, these statutory rights also complement the rising emphasis on individual employment contracts and individual personnel policies in relation to job tenure, working conditions and career structures (Purcell and Sisson, 1983; Macdonald, 1986). Both individual workers' rights and individual employment contracts, for instance, ostensibly rest on a conception that workers are industrial citizens capable of individually obtaining justice within a context of equal power relations.

This paper is a preliminary attempt to address this lacuna by examining the effects of one state agency on managerial strategy. It focuses on the impact of the New South Wales Equal Opportunity Tribunal (EOT) on managerial strategy in relation to the employment relationship, during its first decade of operation. This tribunal was established under the

NSW Anti-Discrimination Act 1977 together with the Anti-Discrimination Board (ADB). These two institutions operate as two sides of a coin, the ADB and EOT providing for the conciliation and adjudication of complaints respectively. Hence in referring to the specialist tribunal this paper is effectively alluding to the complaints system which comprises both bodies. While recognising that state institutions may more greatly impact on organisations of which the government is the employer (Gardner, 1991: 477) this paper concentrates on the public sector experience. It examines two large state organisations which have had very different experiences of the NSW legislation during the 1980s, the Police Force and the Water Board. The Water Board provides for the water supply, sewerage and stormwater drainage of Sydney and outlying districts. Both organisations have traditionally been male dominated. In 1986, 8 percent of police and 9 percent of the Water Board's workforce were female. In addition, the Police Force was comprised almost entirely of anglo-celtic males whereas more than one quarter of the Water Board's workforce had a non-English speaking background (Thornthwaite, 1991: 200, 214).

Similar anti-discrimination laws have emerged in New Zealand and almost every Australian jurisdiction in the last fifteen years.<sup>1</sup> The complaints settlement mechanisms established under the NSW legislation share much in common with those in other Australian jurisdictions and those provided under New Zealand law, including the Race Relations Act 1971 and Human Rights Commission Act 1977.<sup>2</sup> Complaints are in the first instance made to the President of the ADB who, like the New Zealand Race Relations Commissioner and Human Rights Commissioner, has several functions which include the investigation and conciliation of complaints. The EOT inquires into those complaints which are subsequently referred from either the ADB's President or the relevant Parliamentary Minister. The tribunal is a tripartite body which includes one judicial member. The Act prohibits direct and indirect discrimination in a number of areas on the basis of race, sex, marital status, physical and intellectual impairment, homosexuality and age. These grounds differ somewhat from the

<sup>1</sup> Even within the growing literature on the effects of equity policies, however, relatively little attention is given to the impact of these laws. In particular, their implications for industrial relations and human resource management remain largely a matter of conjecture.

<sup>2</sup> Initially, the ADA provided for the Counsellor of Equal Opportunity and Anti-Discrimination Board to perform the conciliation and quasi-judicial functions respectively. The Anti-Discrimination (Amendment) Act 1981 (NSW) provided for the current arrangements.

New Zealand provisions, which also prohibit discrimination in employment on grounds of religious or ethical beliefs, but do not outlaw it on the basis of homosexuality and physical and intellectual impairment. This paper focuses on the NSW legislation's impact in the area of employment. Subject to various exemptions, the legislation prohibits discrimination in recruitment, selection, terms and conditions of employment, dismissal and access to opportunities for promotion, training, transfer and other benefits.

Of central concern in this paper is the relationship between the specialist tribunal and the NSW Government's reform package for public sector management, formulated in the late 1970s. The NSW Anti-Discrimination Act was enacted within a context of fiscal crisis and recession, which had engendered for the government a focus on improving the efficiency and accountability of state organisations. At the same time, the government faced the political expediency of attracting and retaining the support of women, immigrants and members of other groups which had traditionally been disadvantaged in employment and had become highly co-ordinated lobbyists. In response to these pressures, the government emphasised the need to modify the labour management strategies of public sector organisations. In particular, it sought to introduce merit-based labour allocation and other measures to promote equal opportunity and raise labour efficiency. The government's focus on equity initiatives was therefore part of its package of managerial reforms. In 1980, legislative amendments to the ADA required public sector managers to develop programmes to improve the workforce position of women and other designated groups. These amendments are broadly similar to the equal opportunity provisions of New Zealand's State Sector Act 1988. The equal opportunity initiatives of NSW state employers were to a considerable extent guided by the Office of the Director of Equal Opportunity in Public Employment (DEOPE, 1981; DEOPE, 1985b; DEOPE, 1986) and hence exhibit a marked degree of uniformity. Untangling the extent to which various reforms can be attributed to the specialist tribunal's operation and to these other forces is one of this paper's central objects.

The tribunal's effect on management policy and practice is analysed in terms of the contribution which the complaints processes have made to the state government's reform agenda, and in particular the stimulus these provided to the timing, nature and substance of managerial reforms. In assessing this impact, consideration is given to the economic, political and industrial relations context within which the ADB/EOT have operated. The paper focuses in turn on the experiences of the NSW Police Force and Water Board and the legislation's resulting impact on management techniques. Before concluding, the paper compares the legislation's effect on management strategy in these two organisations.

### The Equal Opportunity Tribunal's Impact in the Police Force

The Police Force's experience of employment complaints made under the NSW legislation can be assessed only in relation to complaints made to the EOT. Due to the confidentiality of the conciliation process and management reticence on the subject, there is no data on complaints made in the first instance to the ADB, against police employment decisions. Compared to other state organisations, however, the Police Force has had a high involvement with the EOT. Of the 36 government respondents in complaints to the EOT during its first decade, the Police Force recorded the second highest involvement (Thornthwaite, 1991: 201).

The complaints all rested on issues of recruitment and/or selection and terminations. Particularly pertinent to these complaints were the Police Force's physical recruitment criteria and the training conditions of female police.

As 75% of these complaints were privately settled "in the shadow of the tribunal" they attracted minimal media attention. In the process, they especially demonstrated to management the necessity that recruitment criteria be job-related and individual capacities of applicants be considered. In addition, Police management have been indirectly exposed to the tribunal's proceedings through media publicity of cases. The complaints of which they exhibit the greatest awareness involved sexual and sexist harassment issues. These included *O'Callaghan v Loder & Anor* and *Hill v Water Resources Commission*<sup>3</sup>. There are three major reasons for management's continuing memory of these complaints. First, they attracted embarrassing media publicity for the (public sector) respondents and in *Hill's* case, an extensive damages award, demonstrating the potential costs to employers. Second, four major sexual harassment grievances within the Force during the 1980s resulted in the medical discharge of the women concerned on full pensions, highlighting the potential for the organisation's involvement in complaints similar to *O'Callaghan* and *Hill*. Third, surveys conducted by management indicated that sexual harassment was a potential "minefield" for complaints by police to the ADB (Scott, 1988; Percy, 1988).

Recruitment and sexual harassment issues have therefore been predominant in the Police management experience of the ADB/EOT. Police management officials express mixed, but largely negative, attitudes to the complaints process. Their negative attitudes are fed by the costs to the organisation in terms of the time and money spent on hiring and briefing legal advocates, preparing cases and participating in hearings. They also identify potential costs of monetary compensation and the perceived "drop" in recruitment standards from imposed "inappropriate appointments" (Thornthwaite, 1991: 204-5). The publicity and embarrassment which may accompany EOT inquiries has also engendered anxiety for management. In addition, senior officials consider that anti-discrimination legislation generates grievances over the Police Force's recruitment policies because it can be used as a lever to obtain employment, especially as the tangibility of the physical tests and other recruitment criteria have rendered them easily challengeable. Furthermore, management are subjected to pressure from Parliamentary Ministers to conciliate cases rather than persist with intransigent public defences of policy and practice. Their prerogatives are also constrained by specific tribunal decisions which have, for example, required management to consider the justifiability of recruitment criteria in terms of job-relatedness, provoking the opinion that "we have to prove

<sup>3</sup> (1984) EOC 92-022; (1985) EOC 92-127. The first case involved a complaint by an employee of the Department of Main Roads, alleging that she had been sexually harassed by the Commissioner of Main Roads, Mr Loder. Prior to this case, there had been uncertainty concerning whether the sex discrimination provisions of the NSW Anti-Discrimination Act 1977 applied to sexual harassment. The tribunal found this complaint unsubstantiated, but in a preliminary judgement ruled that sexual harassment came within the meaning of the Act. In *Hill v Water Resources Commission*, Jane Hill claimed her employer was responsible for sexist harassment which had been inflicted by co-workers following her 1981 promotion into a supervisory position in an almost completely male dominated area in the organisation. The tribunal found *Hill's* case substantiated and awarded more than \$34,000 damages. The Water Resources Commission is distinct from the Water Board, on which this study focuses.

a person cannot be an effective police officer now" (Thornthwaite, 1991: 204-5).

To avoid these material costs and encroachments on management authority, the Police Force has adopted specific strategies aimed at preventing the escalation of discrimination grievances and third party involvement in them. For instance, EEO Co-ordinators concentrate on negotiating resolutions to complaints. When initial conciliation proceedings fail, management continue to seek private settlements even while launching vigorous defences of their prerogatives in the tribunal. To prevent authority challenges, management also focus on excluding workers' rights of complaint to the ADB/EOT through jurisdictional objections (Thornthwaite, 1991: 206). In adopting these methods, the Police Force's objective has been to minimise external scrutiny of, and intervention in, employment decisions. Specific reforms of employment policies have been instituted for the same reason, in particular in relation to recruitment and grievance handling.

Since the ADA's enactment in 1977, the Police Commissioner has greatly altered the Police Force's recruitment policies. Some of the changes have occurred as a result of specific challenges. For instance, the female intake quota was abolished in 1980, just one month before a formal complaint about it was lodged under the NSW legislation following unsuccessful negotiations. Similarly, the hearing standards test was modified following a 1988 complaint to the ADB. More extensive reform was also generated by such complaints. In 1982, for example, management introduced several job-related physical agility tests, lowered the male height requirement and monitored the IQ test for cultural bias (NSW Parliament, 1981: 335-6; Percy, 1988; Police Force, 1983: 21-2). In the following year, management exempted ethnic and aboriginal applicants from passing the IQ test and amended the recruitment literature to advise women of the preparation needed to pass the physical agility tests. While this partly resulted from a monitoring of test results which demonstrated the lower likelihood for women to succeed at their initial attempts, it was also an issue specifically raised in 1981 under the NSW legislation (NSW Parliament, 1981: 335-6; Police Force, 1984: 27-8). In 1984, the Police Force began advantaged recruiting of applicants from non-English speaking backgrounds with translating or interpreting qualifications, lowered the female height criteria and introduced targeted recruitment of female, ethnic and aboriginal applicants (Police Force, 1984: 27-8). The continuing importance of the recruitment issue led to the establishment in 1985 of a Task Force to review all recruitment policies for job-relatedness. In 1986, following the Task Force's report (Police Force, 1985), the Police Commissioner eliminated the height requirements altogether and replaced the recruitment tests which had been introduced in 1982 with job-related dexterity tests and other physical agility tests which simulated commonly encountered police tasks (Minister for PES, 1986).

Experiences with the ADB/EOT strongly influenced the nature, timing and extent of these policy modifications and were also used to persuade management officials and police generally of their necessity and hence quell resistance. Official reports, for example, referred to specific tribunal cases to support the policy recommendations (Police Force, 1986 and 1988). Resistance was expected because police had traditionally been strongly attached to such requirements as the height criteria. Hostility to its elimination remains both amongst some management officials and other police as does an attitude that "short people bring trouble". There has been a similarly strong hostility within all ranks to the increased employment and wider deployment of female police (Thornthwaite, 1991: 208).

Extensive reforms have also been made to the Police Force's grievance handling procedures since 1983. The traditional procedure whereby workers complained to supervisors was replaced by one which designated various management officials as grievance "receivers" and established stages of grievance handling, with provision for a multi-party grievance committee at the second stage (Thornthwaite, 1991: 208). The most significant stimulus to these reforms was managerial concern with sexual and sexist harassment issues (Scott, 1988; Percy, 1988). Surveys conducted by the Equal Opportunity Co-ordinator had indicated a growing awareness and high incidence of sexual harassment in the Police Force and the *O'Callaghan and Hill* cases had provided an incentive to avoid public airings of such grievances (Scott, 1988; Percy, 1988). These cases and the EOT's capacity to award \$40,000 compensation were cited in the Police Force's training booklet on grievance handling, to persuade line management compliance (Police Force, 1988: 4-5, 26).

The procedure's introduction was accompanied by an increased clarification of managerial responsibilities and supervisor training. Spokeswomen, Equal Opportunity Co-ordinators and supervisors were designated as first contacts for aggrieved workers and required to keep detailed records of all counselling activities. The laddered grievance procedure enables senior managers to monitor line managers' handling of grievances (Thornthwaite, 1991: 209). Since the early 1980s, all training courses have contained information on sexual harassment and the Equal Opportunity Co-ordinators have crossed the state giving lectures on equity policies, sexual harassment and grievance handling (Police Force, 1983: 34, 106; Police Force, 1984: 32-6, 69).

In terms of achieving management's objective of preventing third party involvement in discrimination grievances, the grievance procedure has arguably been successful not because it provides an effective disputes channel but rather because it silences expressions of discontent. The procedure is the officially accepted avenue for expression of discrimination grievances by police. The low rate of usage indicates its non-viability. Only a few grievances about alleged sexual, sexist and racist harassment have been raised in this channel. In preference, police tend to "handle things in their own way" by tolerating ill-treatment, complaining to peers, transferring or resigning (Melville, 1988; Thommeny, 1988). This is due to a lack of police awareness of the procedure, inadequate line management training, workplace culture and supervisory non-compliance with the procedure (Thornthwaite, 1989: 97; Thornthwaite, 1991: 209-11). The result is that while many grievances over alleged discrimination may remain unresolved, the procedure's existence virtually precludes resort to collective representation over such matters. However, the grievance procedure has identified for management officials many possible sources of discontent, such as transfer and work appraisal practices, enabling them to reduce the likelihood of disputes through corrective action (Percy, 1988).

While recruitment and grievance handling policies have been addressed by management, some sources of discrimination have remained largely untackled. For instance, racist harassment has been a neglected issue in management publications, training and rhetoric. Similarly, supervisors continue to discriminate against women in work allocation, inhibiting their remuneration and promotion opportunities. For instance, many supervisors keep female police "hidden behind desks" and limit their access to overtime shifts, which attract penalty rates. By 1988, senior management were urging supervisors to discontinue such practices, stressing the \$40,000 compensation the EOT could award (Thornthwaite, 1991: 212). The delayed

attention to this latter issue may be due to its intangibility, the lack of specific complaints by police and the absence of such issues from the public arena. None of the highly publicised EOT inquiries, for instance, have centred on task allocation at work.

This further supports the argument that the influence of such specialist tribunals on management strategy is strongly related to an organisation's actual exposure to the complaints process and the managerial objectives this incites. The Police Force's aim to avoid external intervention in discrimination complaints is manifest in its recruitment and grievance handling reforms which are typified by an increased emphasis on consistency, documentation, accountability, counselling and training (Police Force, 1983: 31-2).

### The Equal Opportunity Tribunal and the Water Board

The Water Board has had less direct experience of the EOT than the Police Force. Only one complaint was referred to the tribunal against the Board between 1977 and 1987. The tribunal's inquiry into this matter of alleged discrimination in promotion and transfer decisions on grounds of race and physical impairment, was uncompleted by the end of the studied period (Thornthwaite, 1991: 215). A number of complaints have been made to the ADB by Board employees. Between mid-1982 and mid-1986, for example, the Water Board was notified of ten complaints of alleged discrimination to various bodies, the vast majority to the ADB. The most common allegations were of racial harassment and discrimination in recruitment on grounds of race and physical impairment. Half of these complaints were found to be unsubstantiated after discussion between the parties. Of the remainder, four were conciliated and one was withdrawn (Thornthwaite, 1991: 216).

As with the Police Force, media publicity has widened the exposure of Water Board management officials to the ADB/EOT, particularly in relation to sexual and sexist harassment issues. Management were especially aware of the *O'Callaghan and Hill* cases (Stubbs, 1989; Hankins, 1988). While the former case produced an immediate "senior management flurry", the long term reaction to the *Hill* case has been greater (Stubbs, 1989) and "management are horrified if anything approaching the *Jane Hill* case rears its head" (Hankins, 1988). The strong reaction to this case was particularly due to the close informal links between the Water Board and Water Resources Commission workforces which with the perceived similarity of the organisations, generated fears within the former's workforce that a similar situation might arise there (Stubbs, 1989).

In response to this exposure, the Board's management officials generally perceive the specialist tribunal to be a costly, stressful and, for some, terrifying avenue for grievance resolution (Hankins, 1988; Stubbs, 1989). Yet management also commonly view the tribunal as a last resort for workers which is avoidable through either appropriate internal grievance handling or co-operation within the conciliation setting. As a result, the Water Board favours the private negotiation of discrimination grievances, its primary aim being to prevent grievances escalating to the tribunal. Hence management appreciate the ADB's practice of initially referring appellants back to the Board for internal resolution (Stubbs, 1988; Hankins, 1988). Only two such complaints have subsequently resulted in formal conciliation conferences at the ADB and only one has subsequently been referred to the EOT (Stubbs,

1988; Hankins, 1988).

In the early 1980s, Water Board management also established internal grievance mechanisms for discrimination complaints. In 1981, the Board delegated responsibility to the EEO Co-ordinator for resolving workers' complaints until an "accessible and effective system" was established (Water Board, 1982a: 2,65). Two main forces motivated the Board to refine this rudimentary grievance procedure in subsequent years (Stubbs, 1989). First, a 1981/2 survey of its workforce indicated high levels of perceived workplace discrimination particularly on race and sex grounds (Water Board, 1982b: 83-9, 158-60). Second, the large number of grievances lodged with the EEO Co-ordinator became so onerous that the EEO Unit recommended the devolution of this responsibility. Between mid-1982 and mid-1986, 63 discrimination complaints were lodged with the Unit in addition to the ten referred by the ADB and other agencies (Water Board, 1983b: 53-4; Water Board, 1984: 57; Water Board, 1985: 18-9; Water Board, 1986: 50). In 1984, the Board introduced an EEO Location Contact Network. These contacts were to primarily act as referral points for aggrieved workers. Management's other plan to devolve responsibility for actually handling discrimination complaints to a Grievance Liaison Officer Network, however, was dislodged by trade union opposition (Water Board, 1986: 104; Stubbs, 1989). In 1987/88 the Board implemented a more refined procedure which identified a wider range of officials (including union delegates) with whom workers could air grievances (Water Board, 1988a). Supervisor training and detailed guidelines accompanied the procedure's implementation (Stubbs, 1989; Water Board, 1988b: 38).

In practice, Water Board workers have used the grievance procedure to complain about a range of matters, many of which have little to do with alleged unlawful discrimination. Instead, grievances commonly concern personality problems, promotion, recruitment and allocations of acting experience (Stubbs, 1989; Hankins, 1988). Like the Police Force's grievance procedure, this has therefore provided a channel through which management can generally identify sources of workplace discontent. In addition, it has devolved responsibility for grievance handling, in the process defining and articulating line managers' responsibilities while also enabling their performance in this regard to be monitored (Water Board, 1988b: 2).

During the 1980s, Water Board management also implemented specific initiatives to prevent and deal with sexual harassment. These included a joint union/management committee, sexual harassment policies and procedural guidelines for complaints handling. Modifications to these guidelines progressively devolved responsibility for the prevention of sexual harassment first to supervisors, and later to co-workers. There were three main reasons for the Board's concentration on this issue. First, the Board's workplace survey in 1981-2 had indicated that it was a definite source of worker grievances about which management had been largely unaware (Water Board, 1982b: 87-9). Second, a number of female workers had approached their union with sexual harassment grievances in the early 1980s (ibid). Third, management became acutely aware of their liability for harassment through the media publicity of *O'Callaghan* and *Hill* (Hankins, 1988; Stubbs, 1989). This particularly explains their focus on preventing sexual, and not racial, harassment. Despite its professed intention to eliminate racial harassment in the workplace, the Water Board did not implement prevention strategies until 1988 (Thornthwaite, 1991: 221).

Introduction of the Board's sexual harassment policies was accompanied by an emphasis on staff training. Initial seminars for senior management and supervisors were later extended to female employees and union officials and eventually to all male employees. This introduction of sexual harassment and equal opportunity awareness seminars for supervisors constituted a fundamental change in the Board's supervisory training provisions. The previous inclusion of only technical issues was replaced by requirements for supervisory skills training (Water Board, 1983: 67; Water Board, 1986: 104; Stubbs, 1988). The *Hill* case was prominently covered in the seminars as a persuasive device (Water Board, 1984: 119).

The effectiveness of the Board's policies in preventing sexual harassment is limited by the continued reliance of supervisors on custom and practice. Also, while a large proportion of workers are aware of its official unacceptability in the Board, many have difficulty identifying sexual harassment and its very commonness renders it difficult for individuals to complain. However, the procedure's monitoring potential has induced some supervisory compliance with the policies and its efficacy is somewhat increased by senior management's commitment to preventing the escalation or external reference of such grievances (Stubbs, 1988; Hankins, 1988).

The Water Board also made substantial changes to its recruitment and selection policies during the 1980s. It standardised the recruitment of wages employees, for instance, by requiring the use of selection committees, elevating responsibility for recruitment to more senior management and introducing documentation requirements which enabled the monitoring of selection decisions (Water Board, 1983: 58-9). The Board's recruitment process was also altered to specifically attract women and minority group applicants for occupations where they have been under-represented. The changes included the introduction of targeted selection, EEO awareness training for selection committee members, requisite female representation on selection committees and modified selection criteria. For example, written tests for apprentices were replaced by aptitude tests that had been scrutinised for cultural bias, for both apprentices and clerical recruits (Thornthwaite, 1991: 222-3). The Board also reformed its appointment and promotion procedures partly to eliminate sources of unlawful discrimination. In the mid 1980s, it introduced mandatory selection training, reviews of job advertisements and position descriptions, and guidelines on non-discriminatory interviewing and selection techniques, which include examples mirroring issues raised in complaints heard by the EOT (Water Board, 1984: 18, 63; Water Board, 1985: 37-8; Water Board, 1986: 93-4).

There are several explanations for these reforms of recruitment, selection and promotion policy. In part they reflect the Board's efforts to comply with the government's equal opportunity requirements for public sector organisations. During this period, the Board also underwent restructuring in the form of regionalisation of its activities and associated devolution of some managerial responsibilities. The formalisation of labour regulations and centralisation of authority for employment matters can be explained in terms of senior management's need to ensure compliance with its policies by regional officials. In addition, external influences such as the Government and Related Employees Appeal Tribunal cannot be underestimated. However, the reforms are also attributable to the anti-discrimination legislation. Management's liability for discrimination and the very real potential for complaints provided an incentive to reform policies to facilitate justifiability before external complaints bodies, particularly in relation to workplace harassment and recruitment.

Yet while the ADB/EOT provided a strong stimulus for some policy reforms during this period, its impact on many of the Board's equity initiatives was minimal. This is particularly apparent when other reforms made under the equal opportunity umbrella are analysed. For example, the Water Board introduced on-the-job English language classes for waged workers in 1982. These were a combined union/management initiative and their availability was gradually extended through the workforce (DEOPE b, 1985: 41; Water Board, 1983: 2; Water Board, 1984: 4). In addition, several policy initiatives were undertaken in the mid to late 1980s to broaden women's career opportunities in traditionally "female occupations", with a particular focus on keyboard operators (Water Board, 1984: 5-7; Water Board, 1985: 4-5). Rather than being attributable to anti-discrimination legislation, however, these initiatives were essentially the result of union pressure and the increased labour flexibility which management sought to gain.

In short, many of the Water Board's recent reforms of employment policies are directly linked to management experiences of the ADB/EOT. As with the Police Force, the complaints mechanism has in effect influenced both the reform priorities of the Board's managers and the nature of the policies implemented. Their aim to avoid external intervention in discrimination grievances has dovetailed with other efficiency and flexibility objectives, stimulating the adoption of policy emphases on accountability, formalisation, training, documentation, consistency and monitoring of managerial practice.

## Discussion

The ADB/EOT's impact on the Police Force and Water Board has been identical in neither degree nor substance. For example, the Water Board's reforms to recruitment policies focused on procedural issues whereas substantive issues were central to the Police Force's reforms. To a large extent, this reflects pre-existing differences in the policies of these organisations and, for instance, the Police Force's greater reliance on specific physical recruitment criteria. Yet the ADB/EOT's impact in these organisations also bears a close resemblance. The threat and costs which anti-discrimination legislation has posed to managers in both organisations have provoked strategies to prevent the escalation of discrimination complaints and third party involvement in their resolution. A focus on privately negotiating settlements to such complaints characterises the responses of both the Police Force and Water Board. They have also adopted increasingly standardised and formalised approaches to recruitment, selection, internal grievance handling and by association, staff training. While making sites of responsibility more specific, these changes have also increased the justifiability of decisions and senior managers' ability to monitor line management behaviour.

These reforms are consistent with the state government's requirements for public sector management reform during the 1980s and also result partly from the pressures imposed by fiscal crisis. Indeed the nexus between the complaints handling system and some policy reforms is tenuous. Many can be more adequately explained as responses to the confluence of forces impinging on public sector management in this period including budgetary pressures and the NSW Government's emphasis on increasing the efficiency of state organisations through revised labour management regulations. The government's legislative provisions on

equal opportunity in state organisations were a concrete manifestation of these pressures as was the government's not unrelated insistence on the introduction of merit-based labour allocation.

Yet, in both organisations, the specialist discrimination tribunal played a substantial generative role in the reform process. It influenced managerial priorities through the threat which it posed and the fear this aroused. In addition, however, managerial exposure to the complaints process stimulated particular and general reforms of labour regulations. As this exposure predominately rested on recruitment and sexual/sexist harassment issues, the reforms primarily addressed these areas. As the driving force has been fear rather than the specific proscriptions of decisions, the outcomes of particular complaints were largely irrelevant in this process. Hence the ADB/EOT assisted the state government's achievement of its labour management reform agenda. The tribunal's impact therefore extends far beyond the tribunal chambers. Not only does it motivate, stimulate and guide changes to employment regulations in state organisations, but it also indirectly reduces resistance to these reforms because of its use by management as a persuasive device to quell the resistance of line managers and other employees.

This demonstrates the gradual accretive nature of strategic development by management (Gardner and Palmer, 1992: 476), in this case in response to particular state legislative instruments. It also demonstrates that neglecting the role of specialist industrial tribunals critically undermines analysis of management strategy formulation. As the example of the EOT illustrates, such specialist tribunals have manifold influences on the development and implementation of strategy at the employment relations level, an influence which may become relatively more crucial as the influence of arbitration tribunals on employment regulation declines. The effects of these tribunals, commonly labelled "peripheral" (Romeyn, 1986: 3), are therefore anything but that.

While this paper has focused on management strategy, it also points to three main implications for the analysis of anti-discrimination legislation. First, their industrial relations outcomes cannot be assessed purely in terms of complaints statistics as this neglects their fuller impact as agents of policy reform. Second, the planning, implementation and outcomes of equal opportunity initiatives, therefore, cannot be explained without considering the influence of anti-discrimination legislation. Third, the influence of such institutional mechanisms needs to be considered when evaluating the sources of changes to human resource management and industrial relations in particular workplaces. In terms of public sector industrial relations, for instance, the NSW anti-discrimination legislation clearly provides an avenue - albeit partly indirectly - of state intervention in the labour management strategies of its managers. This suggests that further research is needed on the impact of these and similar regulations on private sector organisations in Australia and New Zealand.

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