

EQUAL EMPLOYMENT OPPORTUNITY, EQUITY AND NESBS: THE CURRENT SITUATION

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The former Labor Government left a legacy of equal opportunity legislation. This article reviews this legacy and Coalition Government action (or inaction) in responding to it. The focus is on appointments within the Commonwealth public service and equity planning in the higher education system with reference to persons of Non-English-Speaking-Background.

During the 1990s when the ethnic community lobby was at the peak of its influence with the Labor Government, the Commonwealth Public Service and Commonwealth Statutory Bodies were required to become the pacemakers in Equal Employment Opportunity (EEO) outcomes for 'disadvantaged' groups, including persons from Non-English-Speaking-Backgrounds (NESBs). Likewise, the Department of Employment, Education, Training and Youth Affairs (DEETYA) introduced major initiatives in equity planning for the higher education sector. This paper briefly summarises the initiatives relating to NESBs and the criticism these initiatives have since been subject to. It then examines what the current Coalition is doing, or more correctly, not doing on the issue.

THE COMMONWEALTH PUBLIC SERVICE

In the case of the Commonwealth Public Service the decisive move came in 1993, when the then Minister Assisting the Prime Minister for Public Service Matters, Mr Laurie Brereton, launched the Public Service Commission's 'Equal Employment Opportunity' Strategic Plan. The plan involved the implementation of 'Government initiatives and special programs to assist the recruitment and advancement of EEO groups'.¹ These groups were designated as Aboriginal and Torres Strait Islander people, women, people from non-English-speaking-backgrounds (NESB) and people with disabilities. Departments and Agencies in the public service were given target recruitment levels to achieve by the year 2000, and a set of 'diversity reporting' procedures were introduced to ensure each entity reported its progress in attaining the required targets. In the case of NESBs, the EEO group included persons who had migrated to Australia and whose first language was a language other than English and the children of such persons. That is, it included both first and second generation persons who matched this definition. The year 2000 target for NESBs was put at 15 per cent of all staff.

In launching the strategy, Mr Brereton stated that 'I should emphasise that they are benchmarks, not quotas'. This is a crucial issue. The Public Service Commission has claimed throughout the exercise that merit in open competition remains the central principle in public service appointments and promotions, notwithstanding its affirmative action targets.

In political circles the way such conflicts are resolved is telegraphed indirectly. When a Government tells senior officers, as Labor did from 1993, that they must institute a monitoring system requiring all Departments and Agencies to collect data on EEO groups, to report their performance ‘against the Service-wide indicators set in the EEO Strategic plan’ and to indicate the ‘strategies used to achieve the objectives set out in the Plan’² then there can be little doubt about where the Government’s priorities lie.

The implication is clearly that Departments and Agencies were expected to achieve the stated targets (effectively quotas) even if that meant fudging the merit principle. An example of the tone of Public Service Commission instructions is indicated in the following statement in 1994 about the NESB target:

At December 1993, 13.8% of people in the APS had identified with this EEO group, but only 9.3% of new recruits to the APS identified with this group. Given the excess of separations over appointments for this group, more work may need to be done by agencies to maintain progress towards the Year 2000 performance goal of 15% people of non-English speaking background in the APS. Attention will need to be given to strategies to attract this EEO group to the APS, in particular to human resource planning and staffing practices.³

The Labor appointed National Multicultural Advisory Council wanted the Commonwealth model to be generalised throughout Australia. It recommended in 1995 that the ‘Commonwealth Government seek the agreement of the Council of Australian governments to take cultural diversity into account in appointments to advisory bodies and government positions in all areas of public sector management’.

This stance reflected a push towards a harder form of multiculturalism which looked beyond ensuring that all Australians were treated without prejudice as far as their cultural or national origins were concerned to a form emphasising outcomes in job and resource allocation based on ethnicity. Just before losing office in March 1996 the Labor Government responded to the Council’s recommendations in a policy document entitled *Our Nation*. One of its key policy commitments was the following: ‘The Government will increase the percentage of non-English speaking background and indigenous Commonwealth appointees on its boards and advisory bodies, setting a target figure of 15% for the year 2000’.⁴

THE HIGHER EDUCATION SECTOR

The NESB factor was also important in the equity provisions instituted by DEETYA in relation to higher education. These provisions date from the publication of the Government’s 1990 discussion paper *A Fair Chance for All*, which recommended that universities develop equity plans designed to improve the representation of certain allegedly disadvantaged groups, including women and NESBs. (In this case NESBs are defined narrowly to include only those who arrived in Australia in the last 10 years and whose first language is not

English.) Universities have been required since the 1991-93 Triennium to nominate targets for each of the equity groups they have chosen to give priority to, and in most cases have identified target enrolment levels for each group, including NESBs.

NESB AS AN INDICATOR OF DISADVANTAGE

Prior to Labor losing office the measures described were enforced as set out above without significant change. However, there was one important development. The House of Representatives Standing Committee on Community Affairs (with a Labor majority) reported in January 1996 in a document entitled *A Fair Go for All* that 'the identifier 'NESB' is no longer appropriate as a measure of disadvantage'.⁵

The Committee drew on unreported Australian Bureau of Statistics (ABS) judgements on this issue. If it had bothered to consult the published literature it would have found longstanding evidence of the inadequacies of NESB as an EEO category. There is considerable diversity in the outcomes for NESB communities, particularly within the second generation. But, in general, research on the educational and occupational progress of second-generation NESB persons shows that they are doing better than their English-speaking background counterparts, despite the latter's advantage in their parents' socio-economic class.⁶ This finding also applies to public service appointments.⁷ In the case of higher education places, a recent (April 1996) Higher Education Council Report⁸ has acknowledged that NESBs (narrowly defined) are now over-represented relative to the entire student body.

The Report's writers did not note, or were not aware, that recently-arrived NESBs (the subset of NESBs chosen as the equity target group) are actually doing considerably better in access to university places than earlier arrived or second-generation NESB groups. That is, the NESBs chosen as the group needing equity assistance are better off than the NESBs excluded from the equity planners' attention. This outcome is partly due to the large number of recent student arrivals (holding permanent residence status) who come from relatively wealthy Chinese-speaking families from Hong Kong, Malaysia and Singapore.⁹

The Standing Committee report has stirred some action since the Coalition came to power. The Council of Ministers for Immigration and Multicultural Affairs (COMIMA), considered the NESB issue at its May 1996 meeting and agreed that further work was required to allow for a more accurate identification of needs arising from linguistic and cultural diversity. It also declared that the term NESB should be dropped from official use 'where possible'. In December 1996, the Coalition Government tabled its response to the recommendations set out in a *A Fair Go for All*. On the value of NESB as an equity indicator it stated that,

It is neither useful nor desirable to develop an alternative identifier to the term 'NESB'. For the purpose of planning programs, it is preferable to use an approach focused around a set of standard questions about people's linguistic, cultural and socio-economic needs.¹⁰

As far as EEO reporting is concerned, however, the Coalition Government stated that 'continued use of "NESB" in an official context may still be appropriate in some reporting, data collection, monitoring and analysis situations, particularly in regard to equal employment opportunity'.¹¹

THE COALITION POSITION ON THE STATUS OF NESBS AS AN EEO GROUP

Despite these developments, as of early 1997, the Coalition had not intervened to change any of the equity provisions operative under Labor. We have thus reached the absurd situation that the government has acknowledged the inadequacies of the NESB indicator, yet the Public Service Commission is still requiring Departments and Agencies to report on the NESB status of their staff in the context of the Commission's original targets for the year 2000. In a sense the Public Service Commission has no choice because the 1993 equity targets are enshrined in legislative form.

But, if the legislation is flawed, surely it should be changed? The Government claims that it is working on alternative ways of identifying 'client differences'.¹² Given the experience with 'NESB' we doubt whether this is the solution. There is a good case for equity intervention on the basis of family resources. But it ought to be possible to devise a marker which picks up the source of such disadvantage without having to resort to an invidious ethnic label.

In the higher education field, we have the equally odd circumstance that the Government's own advisory body, the Higher Education Council, has reported the favourable progress of recently-arrived NESBs, yet the Government has made no changes to the designation of 'disadvantaged' groups. Equity officers within the universities are still dutifully preparing equity plans for NESBs and for all the other equity groups identified in 1990. Perhaps we should not be too critical of the Government here either since the Higher Education Council (HEC) actually recommended that there be no change in the designation of equity groups despite its findings. As the matter stands, when responding to the HEC equity report in July 1996, the Minister, Senator Vanstone, indicated that the Coalition would be addressing issues of equity in the forthcoming budget and that the HEC recommendations would be considered in that context.¹³ In fact nothing came of the matter at Budget time (August 1996), and as a result the equity planning process limps on unchanged.

However, the Coalition Government has not accepted the former Labor Government's final declarations of policy in the multicultural arena as stated in *Our Nation*. As a result there is no requirement for Government Advisory Boards to achieve a 15 per cent NESB representation by the year 2000. The National Multicultural Advisory Board has also in effect been prorogued, to be reconstituted at some future date.

NEW SIGNALS ON YEAR 2000 TARGETS

There may also be some movement in the interpretation of conflicts between merit and the

Public Service Commission's equity performance targets. In September 1996, Senator MacGibbon pursued the question of these targets with the Minister Assisting the Prime Minister for the Public Service, Mr Reith. The Minister replied in part, in December 1996, as follows;

First let me assure you that the APS does not have a quota recruitment policy and that selections to the APS are on the basis of merit.

The legal basis for employment arrangements in the APS is the Public Service Act 1922 (the Act). This Act makes it clear that the basis of appointment to and promotion in the APS is merit. The merit principle requires that job applicants be assessed in fair and open competition according to their abilities, skills and personal qualities, without discrimination, patronage or favouritism.

The Act also requires APS departments to prepare equal employment opportunity programs to eliminate unjustified discrimination and promote equality of opportunity for four EEO groups: Aboriginal and Torres Strait Islander peoples, women, people with disabilities and people from non-English speaking backgrounds. The Act makes it clear that the purpose of these programs is to help members of these groups to compete as effectively as other staff for appointment and promotion on the basis of merit. *There are no quotas imposed on the APS, and there is no requirement to give preference in recruitment to people from non-English speaking backgrounds* [emphasis added].

In the light of this sensible statement we need to know whether its sentiments have been communicated to the Departments and Agencies still gathering NESB data and making personnel decisions with an eye on the year 2000 targets. The Australian Broadcasting Corporation (ABC), for instance, has sought to go one better by stipulating an 18 per cent NESB target (by August 1996!). Why, if merit is the sole criterion for appointments, has the Government not dispensed with the whole paraphernalia of equity reporting and targets? Why has the EEO legislation not been amended? While it remains in place, it sends out messages which conflict with the merit principle.

One response to those questions might be that in the current downsizing era all this is academic. But promotions and replacement appointments are continually being made. If the Government has really changed its policy emphasis it should signal it clearly. In the case of NESBs, since the Government itself has acknowledged the uselessness of the concept for equity purposes it should be formally discarded in reference to all Public Service and higher education equity issues.

References

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3 *ibid.*, p. 25

4 *Our Nation*, Office of Multicultural Affairs, Canberra, 1996, p. 11

5 Standing Committee on Community Affairs, *A Fair Go for All*, Australian Government Publishing Service (AGPS), Canberra, 1996, p. 112

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11 *ibid.*

12 *ibid.*

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