I lost my political career over the Equal Employment Opportunity (Commonwealth Authorities) Bill 1987 when I resigned from the Shadow Cabinet of John Howard in March 1987 and voted to support the Bill soon after. I faced Senate preselection within two days of resigning and was ‘sent into Coventry’1 by some of my colleagues. I was not punished officially by my party for my stand, but was put off the front bench (and was never put back on it)—although, to be fair to the party, I was once invited to a junior position) and my ideas were not popular. There were motions put forward within the party to discipline anyone who departed from the official party position. I believed the provisions of the legislation were consistent with my liberalism and with the positions the party had traditionally taken. This speech, given in the Senate, outlines my position.

The Equal Employment Opportunity (Commonwealth Authorities) Bill 1987 will have my support. As a philosophical liberal, I can do nothing else but support the Bill. Liberalism is not and has never been just some economic doctrine. Liberalism cannot be presented as such to an informed electorate. Philosophical liberals believe passionately in equality of opportunity and in removing barriers, wherever they may be, which prevent people from exercising that equality. The greatest achievements of philosophical liberalism have been to remove such barriers. The ending of slavery, the emancipation of Jews and Catholics in Protestant England, public education, reform of the electoral system, the vote for women—these are just some of them. This Bill continues that tradition of extending equal opportunity and liberty.

---

1 This is a British phrase that means to treat someone as if they are not there—no speech, no contact, and so on. Available from: en.wikipedia.org/wiki/send+into+Coventry.
There are 30 Commonwealth authorities, employing 213,847 people, not otherwise covered by equal employment legislation, which will come under provisions of this Bill. To put the need for the legislation into some context, let us consider just two Commonwealth authorities. Of almost 90,000 staff employed permanently by the Australian Telecommunications Commission in 1986, fewer than 18,000 were women. In the Australian Postal Commission, while all typists and all word processing operators were women, there were no women among 53 divisional managers, there were just three women among 105 executives and there were no women among 274 persons classified as storemen.

I turn now to the specifics of the legislation. Consideration of this Bill resolves itself easily into several matters that can be taken seriatim. The first concerns the genesis of this Bill. This Bill emerged as a direct consequence of action taken by the Opposition in the Senate in August 1986 and of undertakings given by the Minister for Education and Minister Assisting the Prime Minister on the Status of Women, Senator [Susan] Ryan, during that debate. Honourable senators will recall that the Opposition sought then to extend the cover of equal employment opportunity [EEO] legislation to women employed by Commonwealth statutory authorities. Not only did we seek the extension of EEO to those quarter of a million or so employees; we moved an amendment to secure it and we pressed that amendment to a division.

Despite Opposition support for the amendment it was defeated by the combined votes of the Government and the Australian Democrats. Senator Ryan declined to accept the amendment but she had this to say in the debate:

The other statutory authorities about which Senator Baume and Senator Haines have both expressed concern will be covered by specific legislation. The Bill is being drafted and will be introduced as soon as Government business permits.

With this Bill, the Minister for Employment and Industrial Relations, Mr [Ralph] Willis, on behalf of Senator Ryan, has responded to our demand that a considerable number of women be covered by equal employment opportunity legislation. With this Bill, therefore, Senator Ryan has discharged the promise she made last August.

Not only did we demand the introduction of this Bill; we also made some other demands that are now embodied in the legislation before us. We sought a title different from the title of the Bill before the Senate in August. We expressed that demand in an amendment. We pressed that amendment to a division. This Bill that we are debating tonight is named the Equal Opportunity (Commonwealth Authorities) Bill 1987. That is to say, the Government has now given expression in the title of this Bill to the sentiments of the amendment we proposed in August.
Senator Teague: It is a tribute to what you urged.
Senator Peter Baume: I thank Senator Teague.
Senator Haines: Senator, it was May. You said August when you meant May.
Senator Peter Baume: The Committee stages of the Bill took place in the Budget session, I believe. I have the Journals of the Senate for 22nd August.

But that is not all. We also sought a different definition of discrimination for the purposes of the Bill debated in August. We moved an amendment to that effect, too, and we pressed that amendment to a vote. This Bill contains a definition of discrimination consistent with what we asked for in August.

Another matter that has concerned some of my colleagues is the number of classes of persons whose interests are to be considered in this Bill. Honourable senators certainly have not forgotten that this Bill complements not only the affirmative action legislation of 1986, which dealt specifically with the needs of women for employment equity, but also the Public Service Reform Act of 1984, which concerned itself with the interests of wider groups of people.

The Public Service Reform Act makes specific references to women and to designated groups, which include Aboriginals and Torres Strait Islanders, certain classes of migrants and people with physical or mental disability. The opposition parties did not object to that provision in 1984. There is no objection in substance in the fact that this Bill contains reference to several classes of persons whose rights to equal opportunity should be considered. It does not constitute a ground for opposing the legislation. On the contrary, we should welcome the chance to secure equal opportunity too for those classes of persons, if it is needed.

Some concern has been expressed about the power of the minister, pursuant to Clause 12, to give directions to a relevant authority with respect to the performance of its obligations under the Act, when it is passed. It has been suggested that this power is new and sinister and that it could lead to the giving of inappropriate directions in relation to employment matters. We have heard reference to that tonight. Such concern is ill founded. Clause 12 is a standard type of clause found in most Acts constituting statutory authorities. The clause is very similar to Section 7 of the Telecommunications Act, Section 20 of the Trade Practices Act, Section 9 of the Parliament House Construction Authority Act, Section 7 of the Australian Broadcasting Corporation Act and Section 18 of the National Crime Authority Act, which allow ministerial directions to be given to Telecom Australia, the Trade Practices Commission, the Parliament House Construction Authority, the Australian Broadcasting Authority and the National Crime Authority, respectively.
The next matter to be discussed in considering this Bill is whether it contains fatal defects. Let us first consider some minor matters. Later let us look at the major question of whether this Bill leads us down the road to quotas. Clearly the Bill has a number of deficiencies. For example, it contains the same objectionable definition of employee as did the Bill which we considered in 1986—a definition which includes independent contractors as employees. We opposed such a definition then and we will oppose it now. It is as objectionable now as it was then. It is as unnecessary, as inappropriate and as unwanted.

Second, it has been claimed by those opposing the Bill that the Government has failed to submit this Bill, as it promised recently it would do with all legislation, to the scrutiny of its Business Regulation Review Unit before submitting the matter to the Parliament. We now know that the Government did make the Bill available to that unit. The Minister for Industry, Technology and Commerce, Senator [John] Button, told the Senate on 28th April, just a day or two ago:

> The Business Regulation Review Unit was given the opportunity to comment on the new regulations involved in the Government’s equal opportunity reforms as drafted in the Equal Employment Opportunity (Commonwealth Authorities) Bill 1987. I understand that the Business Regulation Review Unit was also given the opportunity to be involved in discussions on this and other policies the Government has introduced in the equal opportunity policy area.

So, it seems that that objection too, raised by the Opposition in another place, is without major substance. I will have no difficulty voting for amendments related to technical deficiencies in the Bill before us. But these technical deficiencies are not fatal now, just as other deficiencies were not fatal back in August. The Liberal Party of Australia and the National Party of Australia were unsuccessful with some 30 or more amendments in August 1986, but we still found it possible to support both the second and the third readings of the legislation.

This now leaves the question of quotas. It has been variously alleged that this Bill contains quotas, that it contains quotas manqué, that it contains de facto quotas, that it implies quotas, that it gets Australia on the road to quotas, that it opens the door to quotas or that it goes further than other legislation which we have supported. If valid, these are serious concerns that could provide justifiable grounds for opposing the passage of the Bill. Many of my colleagues believe the Bill does introduce quotas; I do not. We must determine the substance of those claims in this debate. This is best started by reading the legislation—reading the document and seeking from it the plain meaning of the words it uses. The concerns of many of my colleagues are focused on words in Clause 6 (g) (ii). Those words have been read to the Senate several times, and doubtless will be read to it several times more. But applying to those words their plain meaning, their normal English meaning, it is not possible to assert that they introduce quotas, impose quotas for employment in Commonwealth
statutory authorities, or open the door to quotas. The words themselves have been copied, with a one-word change, from Paragraph (c) of the definition of ‘program’ contained in Section 22b (1) of the Public Service Act. That definition was inserted by the Public Service Reform Act 1984—another Act of Parliament to which we on this side raised no objection just three years ago. The difference in the words transferred from the Public Service Reform Act to this Bill is that the word ‘or’ in the 1984 Act has become the word ‘and’ in this Bill. That is the only difference. We made no suggestion in 1984 that these words represented quotas in employment, because they did not. Yet it is now being asserted, and many of my colleagues believe, that a change of the single word from ‘or’ to ‘and’ alters the effect of the Bill to such an extent that one can adduce the imposition, partial imposition or potential imposition of quotas in public service employment. Really, such a proposition is unsustainable.

Honourable senators will realise that to understand the Bill before us, we are comparing its text with two Acts from which certain words have been taken. To make that comparison, we need to look at all three documents. The second Act from which words have been taken, the Affirmative Action (Equal Employment Opportunity for Women) Act 1986, states in Section 8(g)(i):

- a requirement to set objectives, and

I emphasise the word ‘and’ as this is the argument on which the quota argument is based:

- set quantitative forward estimates against which the program can be assessed.

The words in the Bill that are alleged to imply employment quotas actually reflect the sentiment of that provision from the 1986 Act. We supported that Bill containing those words just eight months ago. They did not suggest quotas then, and words almost identical did not suggest quotas in the 1984 legislation. Even with the single drafting difference, they do not suggest quotas now. Unless those who claim there are quotas in the Bill can make a compelling case out of a single word ‘and’ the difference is insignificant. Certainly it is not of itself sufficient to give or sustain a ground for voting against the Bill. More than that, any words contained in that part of the Bill—the part about which all the argument has been—are contained in the interpretation section. Clause 3 (4) contains the words critical to resolving the argument that this Bill imposes or suggests quotas in employment. These words have been quoted before and I shall quote them again:

Nothing in this Act shall be taken to require any action incompatible with the principle that employment matters should be dealt with on the basis of merit.
Put precisely, this provision puts into legislation the assurance that no-one can be required to act other than on merit—for example, by setting any quotas.

My advice from lawyers to whom I have spoken is that the words in Clause 3 (4) would, in fact, enshrine the merit principle, no matter what interpretation, however extreme and unreal, one decides to place on the words in Clause 6 (g) (ii). Pearce, a leading authority in statutory interpretation, argues that each Act of Parliament must be read as a whole, so that no section is divorced from its context and so each section is considered as part of the whole instrument. Therefore, every part of this Bill will be construed subject to the overriding merit principle enshrined in Clause 3 (4).

Further, honourable senators will be aware that Section 15ab (2) (f) of the Acts Interpretation Act—well known to honourable Senators, I am sure—provides clearly that a court called on determine a matter covered by this legislation is now able to go to the Hansard and read the second reading speech to be clear about the intention of the minister who introduced the Bill. That second reading speech, given by the Minister for Employment and Industrial Relations (Mr Willis) in another place, made it clear that the Government’s intention is that there should be no quotas imposed by the Bill and, indeed, that the merit principle should continue to have overriding precedence. He said:

I wish to emphasise the programs are not intended to, and will not lead to, positive discrimination. The Bill expressly confirms that employment matters are to be dealt with on the basis of merit, and the whole thrust of the legislation will strengthen the merit principle, by ensuring the review of any existing discriminatory personnel or employment procedures.

Not only is that a statement of government intent, but it is a statement that could be put before a court should the need arise. So it is not possible to argue convincingly that this Bill has anything at all to do with quotas in employment—and, on that test, the major objection to supporting the legislation fails.

It is clear that valid objections to this legislation are minor in nature. There are no valid major objections. In particular, the claim that this Bill has something to do with quotas in employment is contrived and quite unsustainable. It rests with those who would continue to press such a claim to establish a more compelling and credible case than they have done so far if they expect anyone from the middle ground of Australian politics to believe them.

However, that still leaves unanswered the question of why I have found it necessary to resign my position and, for the first time in 13 years, cross the floor and oppose my party. After all, everyone is on the losing side of a Cabinet or Shadow Cabinet argument from time to time. One does not resign easily from
a position of responsibility. But one should never resign from one’s principles or integrity. One should never resign from one’s wider duty to the Liberal Party or to its traditional commitment to issues such as this.

It was just over eight months ago that I argued in this Senate, as shadow minister and on behalf of the Opposition, for the precise measure that we are considering today. I spoke then with the authority of John Howard, and on behalf of the leader, and of the entire Shadow Cabinet and the Opposition parties, to demand that women employed by Commonwealth authorities should enjoy no less right to equal opportunity in employment than women in the Commonwealth Public Service or in the private sector. We are asked now, just eight short months later, to reverse that stand, to abandon the collegial position we took then, to deny what I then demanded on behalf of the Opposition and to vote against what is fair, and just, and reasonable. Equal opportunity is fair and just and reasonable. It is also thoroughly Liberal. It empowers citizens to compete on an equal basis. It removes barriers that prevent them from so doing. It is my party that has moved in that eight months from a civilised stance to a position which I find discreditable and which made my position impossible.

We have heard a lot in the last week or so about loyalty and teamwork. They are important requirements of any shadow minister and of any shadow ministry. Implicit in the relationship that a minister or shadow minister has with his colleagues is the bond of loyalty, the collective spirit that sees the individual support the decisions of the team and the team support the individual is his advocacy of their joint cause. Loyalty and teamwork involve obligations, too, upon the group towards its individual members. Loyalty requires, for instance, that those who go out with the message on behalf of the party, a message endorsed by their party, and who sell that message, are not then abandoned for the advantage of the moment in the absence of compelling and credible new argument. Where a team member finds himself or herself in such a circumstance, resignation becomes the only appropriate course.

I will fight still for a continuing liberal vision of a society of free and powerful individuals, each able to control her or his own life. Equal employment opportunity based on merit is such an issue and this is such a Bill. In pursuit of that goal, I would oppose measures to give unmerited preference to women or to take any action in employment and employment matters other than on merit. But this is not such a measure.

This Bill is supported widely by women within the Liberal Party of Australia. It is supported by most of the significant women’s groups within the party, including the Federal Women’s Committee, certain state women’s committees, Liberal feminist and network branches and Liberal business and professional women’s groups. This Bill is supported by every branch of the Women’s Electoral
Lobby across Australia, by many associations of women employees, by at least one state branch of the Young Women’s Christian Association, by groups representing women in professions, by the feminist legal action group, by state women’s advisory councils, by branches of the business and professional women’s organisation and by the Federation of Ethnic Community Councils of Australia. It has support, all right!

Every measure to empower women has been opposed bitterly by conservative elements in Australia since Federation. This Bill is no exception. The objections raised to this measure now before us are in the tradition of that resistance and those objections. They are based on a false construction of the Bill and they have no merit.

I will remain loyal to a vision of individuals and of the society they can create together, loyal to measures to empower individual people to participate. I will remain loyal to the collegial view I made of this Government on behalf of all my colleagues here in the Senate eight short months ago—which I made with their authority. I will remain loyal to the history and traditions of the party.

In summary, this is a measure that I demanded on behalf of the Opposition, containing amendments that I also demanded. Yes, it has some objectionable features requiring amendment, and I will vote for the amendments. But it contains no elements at all that warrant opposition to the Bill as a whole. This Bill is the logical and necessary accompaniment to the Bill that we supported in 1986 and it follows that I will vote for the Bill.

Responses to the speech

It is perhaps my unfortunate duty to speak in support of the Equal Employment Opportunity (Commonwealth Authorities) Bill 1987 after such an eloquent speech by a member of the Opposition who has delivered a tough, logical, researched, and may I say, courageous address in support of his principles, principles which I think are eternal, which reach across this Chamber and which should invite the common support of all parties here. During that address a number of my colleagues asked me to say that they, as well as I, admire the stand Senator Peter Baume has taken and which I understand a number of his colleagues will take in defence of those principles.

—Senator the Hon. Peter Cook
30/4/1987

Peter

I was about to have a quiet cup of tea in the lobby when you commenced speaking—naturally, I felt compelled to come back in and listen to your very fine speech.

Quite apart from the particular issue, the explanation of liberalism was such as to explain why it is so attractive—I intend to raise your advocacy in my speeches (with attribution as appropriate).

Regards

Michael
(Hon. Michael Tate
Labor Senator for Tasmania
Minister for Justice)

[Handwritten note]

Brilliantissimo!

—Christine Wallace
Staff Officer, Sen. Hon. F.M. Chaney
Later a journalist and author

I must write and congratulate and thank you for the stand that you took.

—Daphne Kok
Deputy Chancellor
University of Sydney

It was a superb speech—measured, courageous, passionate. Australia very much stands in your debt. Venceremos.

—John Funder
Deputy Director
Baker Medical Research Institute
Your resignation—as I said—was a great sadness for me too, as a friend and as a female. Keep up the good work—we need you.

—Margaret Peacock (3MP)
(then wife of Hon. Andrew Peacock)

I wish I could toss a vote in the direction of Senator Peter Baume who was prepared to sink all chances of promotion in his party because he believed in a principle.

—Keith Dunstan

For many it was his finest hour.

—Marian Sawer

Senator Peter Baume and Ian Macphee are men of principle.

—Sydney Morning Herald

---

3 Sawer (2003: 175).
This text is taken from *A Dissident Liberal: The Political Writings of Peter Baume*, by Peter Baume, edited by John Wanna and Marija Taflaga, published 2015 by ANU Press, The Australian National University, Canberra, Australia.