

THE 'RYAN JUGGERNAUT' ROLLS ON

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I INTRODUCTION

In August 1984, the *Sex Discrimination Act 1984* (Cth) ('SDA') came into effect. A remarkable, if not unique, aspect of this law is that 20 years on, its passage has been marked around the nation by forums and celebrations. From my personal participation in these events, I note that the *SDA* is widely regarded as a successful piece of law reform, a legal instrument that has maintained its relevance. Not many laws of the Commonwealth Parliament during its century of existence have provoked, two decades later, such a level of recognition and support. Why does the *SDA* retain its efficacy and its high standing among activist women? Perhaps these outcomes are to be explained by the clarity and relevance of its political objectives, rather than by its legal character.

On 2 June 1983, on behalf of the Hawke Government, I introduced into the Senate the *Sex Discrimination Bill 1983* (Cth) ('SDB') to make illegal discrimination on the grounds of sex, marital status or pregnancy. The Bill also outlawed sexual harassment in the workplace, marking the first time in Australia that such protection had been legislated for. Its coverage extended to all areas of employment, education and services. There was, however, little in the Bill that was entirely new. Several States – New South Wales, Victoria and South Australia – already had sex discrimination legislation in place. The Commonwealth SDB built on these State provisions, extended their coverage, and included the new prohibitions on sexual harassment. To make the Bill as strong and extensive as possible, the Government relied, in constitutional terms, on the corporations power¹ and the external affairs power.² In preparation for the use of the latter power, the Hawke Government had ratified the United Nations

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1 *Australian Constitution* s 51(xx).

2 *Australian Constitution* s 51(xxix).

*Convention on the Elimination of All Forms of Discrimination against Women*³ ('CEDAW').

Twenty years on none of this seems remarkable. At the time, the politics surrounding the Bill were explosive. From the first legislative step – the ratification of *CEDAW* – the initiative met with sustained, vociferous and irrational opposition from powerful sectors of the community. Parliament was besieged by thousands of petitions stating opposition to the Bill in the most colourful terms. Inside and outside Parliament, opponents claimed that the Bill would bring about the end of the family, ruin the economy, undermine the male labour force, and destroy Christianity and the Australian way of life. The Bill was described in Cold War terms as a Russian plot, designed to replace our sunny, god-fearing way of life with communist barbarisms and godlessness. Criticisms along these lines formed the basis of full-page advertisements in the major newspapers, and found their way onto banners at large rallies held to 'stop the Ryan juggernaut'. Talk-back radio programs in country towns, as well as our cities, were clogged up for weeks on end with hysterical critics of the Bill. Some of the most ferocious critics were women.

It is instructive to note that this key initiative to improve opportunities for Australian women, provoked more controversy than any of the much more radical measures taken by the Hawke Government in its first few months. For example, as the Bill was being debated, the Government floated the Australian dollar and deregulated the banking system. In such a turbulent and unfamiliar policy environment, why did the relatively moderate SDB cause such a storm? To answer this question, we should look at the dominant social values of the time.

II THE SOCIAL AND POLITICAL BACKGROUND TO THE ENACTMENT OF THE SDA

In matters of the socially approved roles and legal rights of women, Australia at the beginning of the 1980s, despite its fine democratic heritage in other respects, maintained a particularly conservative culture. Tackling this conservatism, and its serious consequential restrictions upon economic and other rights of women, had been the central focus of my parliamentary work since my election as Senator for the Australian Capital Territory in December 1975. At that time, and for many years subsequently, Australia had one of the most gender-segregated labour markets of any country in the Organisation for Economic Co-operation and Development ('OECD'). Women were locked by discrimination into an employment and pay ghetto. Industrial jurisdictions had accepted the principle of equal pay, but the work ghetto, limited education and training, and the meagre provision of child care meant that women's earnings were considerably lower than – in fact, about two thirds of – men's wages. In both the public and private sectors, working women were, in almost all cases,

3 Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

limited to support roles. Although the official marriage bar for women in the public service had been lifted a few years earlier, discriminatory attitudes and practices prevailed, as they did in the private sector. Most girls did not complete high school and were overtly discouraged from studying advanced mathematics and sciences. In universities, in relation to postgraduate study and research opportunities, female students encountered systemic as well as individual discrimination. Consequently, in academia, women had attained very few senior academic or administrative positions.

In order to tackle such unfair restrictions on women's lives and to get some reform momentum going, in 1981, while still in opposition, I introduced a Private Member's Bill. This was a model construction using every constitutional power possible to prevent discriminatory acts based on sex, marital status or pregnancy. As well as anti-discrimination complaint-based machinery, it included affirmative action provisions. The latter, reflecting but not copying the American experience, required employers to establish active and systematic hiring, training and promotion policies for female employees.

The Private Member's initiative served a useful, if limited, educational function. It attracted some bipartisan political support and locked the parliamentary Labor Party into a commitment to legislate along these lines as soon as it formed government. It encouraged feminist organisations such as the Women's Electoral Lobby to support Labor. What it failed to do was to bring conservative elements in Parliament, the community and business along with it. In 1983 – just a couple of months after we were elected to office – I was able, on behalf of the Labor Government, to introduce the SDB. However, conservative elements had mobilised and were more intent than ever on preventing any change to the inferior position of women.

The Bill as introduced turned out to be just the first step in what became a difficult legislative marathon, involving more hours of debate than any preceding piece of legislation had ever attracted, requiring the acceptance of numerous amendments and one substantial redrafting, with all of this activity surrounded by the black noise of protest and misrepresentation. Given the broad acceptance at that time – in Australia and in developed countries generally – of the principles of non-discrimination, the extent of the obstruction was surprising, particularly as the more contentious provisions of my 1981 Private Member's Bill, the affirmative action measures, had been deferred for a later Bill. In government, recognising the widespread public confusion about affirmative action, and the capacity for mischievous misrepresentation by opponents of the intention of such measures, we had decided to split the Bill into two parts. The first part, which became the *SDA*, covered the now familiar territory of prohibition of discrimination and provision of conciliation procedures. The affirmative action section was postponed. It was introduced as a separate Bill in 1986,⁴ and then only after consideration of a 12 month pilot program involving 28 major public companies, the universities, representative women's groups, the Australian Council of Trade Unions and members of the Opposition.

4 Affirmative Action (Equal Employment Opportunity for Women) Bill 1986 (Cth).

In 1983, I held lengthy and frequent negotiations with the Opposition and the Australian Democrats, and produced from these discussions a range of amendments. Some improved the Bill; others were agreed to for the sake of political compromise. A temporary exemption was given for the insurance and superannuation sectors. I regretted this step but accepted its necessity because of the actuarial complexities of removing sex discrimination from defined benefit superannuation schemes and life insurance products. Partial exemptions for church schools and areas of the Australian Defence Forces ('ADF') were given as political compromises, in order to get the Bill through the Senate. Despite the lengthy negotiations, and unremitting criticism from opponents of equal opportunities for women, the Bill passed through the Senate and was gazetted and in operation by August 1984.

III SINCE 1984

Since 1984–85, annual reports to Parliament from successive Sex Discrimination Commissioners show that the Act has provided extensive practical protection to women, mainly in employment matters, including protection from sexual harassment. At last count, since 1984, Commissioners had dealt with some 13 000 complaints. This extensive practical use provides the main explanation for the continuing public support for the Act. From the beginning, it worked and it continues to work. Since 1984, although Australian women have achieved much greater opportunities in school education, universities and the workforce, and the gender pay gap has lessened, sex discrimination continues. Thus, the Act continues to be relevant. Because Parliament has revisited and amended it, the Act has also maintained its efficacy.

From 1990, females in the ADF were allowed access to combat related roles from which they were previously exempted. As combat related roles comprise some 43 per cent of all ADF positions, this amendment was important in opening up defence careers to women. Exemptions for superannuation were reduced to an actuarially required minimum. When award-based superannuation was introduced in 1987, followed in 1992 by compulsory employer superannuation contributions, these measures applied equally to males and females. After a major parliamentary review of the *SDA* produced the *Halfway to Equal* report in 1992,⁵ further amendments included the extension of the *SDA* to federal industrial awards and stronger sexual harassment provisions. The current Sex Discrimination Commissioner has been effective in using the Act to promote the concept of paid maternity leave, highlighting the reality that, in the absence of such paid leave, women who become mothers do not have equal opportunity in the workforce, and are thus victims of indirect discrimination.

Conservative elements have wished to amend the *SDA* to remove its protections in specific cases. The Catholic Church, supported by the Commonwealth Attorney-General, sought, a couple of years ago, to change the

5 Legal and Constitutional Affairs Committee, Parliament of Australia, *Halfway to Equal* (1992).

Act to prevent single women from using in vitro fertilisation services.⁶ Such a restriction would have allowed discrimination on the grounds of marital status and, in the case of same-sex female couples seeking assisted pregnancy, discrimination on gender grounds. This step failed. Recently, the Commonwealth Education Minister supported the wish of a Catholic schools system executive to offer male-only teacher scholarships. This step did not proceed and other non-discriminatory means are being found to encourage males into the teaching profession.

The *SDA*'s capacity for constructive amendment is a strength. As social and economic circumstances change, it may well be amended further to better meet the changing needs of women. No doubt from those who disagree with the extent of equal opportunity now enjoyed by Australian women we will see more attempts to weaken it or reduce its scope. In my view, however, the *SDA*, 20 years after it was legislated, has become a permanent part of Australia's human rights machinery. Ironically, this Act, which triggered so much obstruction and hostility at its inception, has proved remarkably robust. This robust character can partly be accounted for by the Act's thorough technical preparation back in 1983, and earlier, through the Private Member's Bill. Partly too, its endurance reflects the unusual extent of negotiation and compromise that the Government undertook to ensure, not only its passage through the Senate, but also the genuine adoption of its overall intent by Liberal and Australian Democrat Members of Parliament.

IV CONCLUSION

My final observation is this. The Act coincided with a defining moment in Australia's social development. In 1983, with the election of a popular reforming government, Australia was finally poised for progressive social change. Although the tempestuous Whitlam Government had started massive change, that administration was too short-lived to complete the tasks. In 1983, those defenders of the status quo who wanted no social change, recognised their last opportunity to prevent progress, and they gave it all they had. The SDB became the emblematic action, which, if allowed to succeed, would change Australian society forever. As it turned out, the Hawke and Keating Governments had between them 13 years to modernise Australia, and they did this in ways that cannot be unravelled. I doubt that even my greatest critics in 1984 would argue these days that we should return to the era when it was both legally and socially acceptable to sack women on the grounds of sex, marriage or pregnancy. While many injustices remain, social change for the better has happened, irrevocably. The *SDA* contributed crucially to that change, and will continue to support greater justice for women in the future.

6 Sex Discrimination Amendment Bill 2002 (Cth).