Forum to mark the 20th Anniversary of the Sex Discrimination Act

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The Commonwealth Sex Discrimination Act: Aspirations and Apprehensions

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Thank you to Commissioner Pru Goward for inviting me here to be part of the 20th anniversary celebration of the Commonwealth Sex Discrimination Act. The Act has been in good hands, despite difficult times. In my paper I am going to discuss some of the pre-history of the Sex Discrimination Act, and then some of the myths that have become attached to it.

Australian women were very early in global terms to obtain formal rights of political equality. This did not, however, bring an end to sex-based discrimination in politics, let alone in other areas such as employment and education. There were long campaigns to achieve specific objectives such as equal opportunity to practice professions. Political candidates were often quizzed by women’s organisations as to their attitudes towards equal opportunity issues. For example in 1913 the Women’s Political Association in Victoria presented federal candidates with a questionnaire to rate their views on matters such as equal pay for women and equal opportunities for women in the public service.

The demand for more general equality guarantees was somewhat slower to emerge. It surfaces during the Second World War when women were mobilising to have a voice in postwar reconstruction. In 1942, prominent feminist Jessie Street wrote to the prime minister informing him that women in the Allied democracies were requesting Constitutional change “to extend to women all rights, status and opportunities enjoyed by men with provision that any sex discrimination prescribed in laws or regulations be invalid”.¹ She asked the government to prepare an amendment to the Constitution

granting women equal economic, political and social rights. The following year a gathering of some 90 women’s organisations in Sydney endorsed Street’s call for a Constitutional equality guarantee. When the government finally put its proposals for Constitutional change to referendum in 1944, however, no such guarantee was included.

Demands for a general prohibition of sex discrimination receded in salience during the Cold War being widely regarded as having something to do with communism—an attitude we will find was still alive in the 1980s. Meanwhile the 1960s brought the increased labour market participation of women, the establishment of the Women’s Bureau in the federal government and the much delayed removal of the Commonwealth marriage bar. Women public servants and women working in statutory bodies such as the ABC had still been losing their permanency and their superannuation on marriage, some 20 years after this ceased to be the case in the UK and New Zealand. This was thanks to the stonewalling of Menzies with the able assistance of the Australian Clerical Officers’ Association (ACOA). The 1970s saw the arrival of a new wave of the women’s movement and the creation of Women’s Electoral Lobby (WEL), which made sex discrimination a major campaign issue in 1972.
Photo of WEL Melbourne from the ‘Form Guide’ to Victorian federal candidates published in the *Age*, November 1972
The many examples of gross discrimination in employment in Australia were a gift to the articulate and increasingly confident WEL women. Whatever compelled the federal secretariat of the Liberal Party of Australia to state that a male graduate would be preferred when advertising for a position of research officer in late 1972? Of course at this time, and right up to the passage of the Commonwealth Sex Discrimination Act in 1984 it was standard for classified job advertisements that appeared in the newspapers to be divided between those for men and boys and those for women and girls.


From the vantage point of today it is hard to remember why you had to be male to do jobs such ‘loans officer’, ‘insurance investigator’ or even to be manager of a Uniting

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Church Conference Centre.

In November 1972 Senator Lionel Murphy, soon to be Attorney-General announced that: ‘The need to remove discrimination against women is obvious and will have early priority from a Labor government.’ 3 Apart from re-opening the equal pay case on their second day in office, the Whitlam government did move quickly to ratify ILO Convention 111 on Discrimination in Employment and Occupation. The all-male government was slower to move on sex discrimination legislation, however, and WEL lobbied in vain in 1973 to have sex discrimination included in the ambit of the Racial Discrimination Bill and in the abortive Human Rights Bill. In August 1975 the government did circulate a memorandum, on a ‘Proposed Bill to Prohibit Discrimination against Persons by Reason of their Sex or Marital Status’. 4 By then, of course, it was too late and the dismissal of the government in November meant that the proposed Sex Discrimination Act did not eventuate.

In 1974 WEL had succeeded in getting the minimum wage extended to some 300,000 women receiving less than the male minimum. Women had not been eligible for the minimum wage, which was supposed to have a ‘family’ component. Edna Ryan’s dramatic production of as yet-unreleased statistics showing women were the sole breadwinners for 131,700 families was the clincher in the Conciliation and Arbitration Commission. It is important to remember these things in the context of the propaganda campaign of the last two decades that has tried to depict equal opportunity as an elite agenda or the preserve of middle-class women.

Progress on anti-discrimination legislation was made at the State level with a Sex Discrimination Act enacted in South Australia in 1975 and Equal Opportunity and Anti-Discrimination acts in Victoria NSW respectively in 1977. While the Victorian Act was

4 In retrospect, the fact that the only Bill to be enacted was the Racial Discrimination Act was perhaps a blessing in disguise; it made an ideal test case before the High Court for the use of the external affairs power as a Constitutional base for federal human rights legislation (in Koowarta 1982). This meant that the Constitutionality of the use of the external affairs power to enact human rights legislation was established before the more controversial Sex Discrimination Act came along.
there in time for Deborah Wardley, whom Ansett refused to employ as a pilot on the
ground of her sex, there was no legislation in States such as Queensland, where the
Mayor of Rockhampton had been adamant in pursuing his policy of sacking married
women from Council employment.  

At the Commonwealth level the dismissal of the Whitlam government by no means
brought an end to the project for sex discrimination legislation. WEL and the UNAA
Status of Women Committee were lobbying the new Fraser government on the issue and
the Minister with responsibility for Women’s Affairs, R.J. Ellicott, was persuaded of the
case. He told the first meeting of the newly appointed National Women’s Advisory
Council in late 1978 that the government was considering legislation to prohibit
discrimination on the grounds of sex and marital status. Convenor of the Council, Beryl
Beaurepaire, took up the proposal with alacrity and brought all her formidable political
skills to bear on the campaign. She organized a major conference on anti-discrimination
legislation in Melbourne in May 1979, intended to prod the government into action.
Liberal women such as Queensland Senator Kathy Martin played important roles in the
Melbourne conference but battle lines were already beginning to emerge, with Tasmanian
Senator Shirley Walters opposing sex discrimination legislation along with Babette
Francis and Jackie Butler of the newly formed Women Who Want to be Women.

The Melbourne conference was strongly supported by WEL women, who made up about
a third of the participants and presented papers and led workshops. Their
recommendations won the support of the conference, and included provisions for
affirmative action and sanctions, and scope to cover sexual preference as well as marital
status, pregnancy and parenthood. At its national conference in Adelaide earlier in the
year WEL had adopted an even more ambitious proposal, for a new Section 116A in the
Constitution, to prohibit discrimination on the grounds of sex.

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5 Eventually resolved in 1978 by the Conciliation and Arbitration Commission using ILO 111 as a basis to vary the Municipal Officers’ Association to include a non-discrimination clause.
Ellicott, however, was consistently frustrated by the Attorney-General and by National Party cabinet colleagues in his attempts to advance proposals for Commonwealth legislation. In late 1979 he tried to force the pace by issuing, as Minister for the Capital Territory, a press release on the introduction of a sex discrimination ordinance for the ACT (21 December 1979). This attempt to commit the government also foundered, despite supportive action by the ACT House of Assembly.

The tripartite National and State Employment Discrimination Committees (EDCs), established to honour Australia’s ratification of ILO 111, were themselves actively lobbying against anti-discrimination legislation by this time. Employer bodies approved of the EDCs, which were non-statutory bodies on which business as well as unions were represented and which had a purely hortatory role.

Beryl Beaurepaire continued her campaign, with an unprecedented series of town hall meetings with women around Australia over Australia’s Plan of Action for the UN
Decade of Women. A centre-piece of the Plan, of which 50 000 copies were distributed, was legislation to provide guarantees against ‘discrimination on the grounds of sex, sexual preference and marital status’. The process culminated with a national meeting in the Academy of Science in Canberra in March 1980, with delegates whose election had been overseen by the Australian Electoral Office. Thanks to the masterly chairing of Beaurepaire, broad consensus was reached. Once again, however, the Plan of Action was blocked by the National Party, and never received government endorsement.

At the Mid-Decade Conference in Copenhagen Ellicott did manage to sign the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This was despite Women Who Want to be Women trying physically to prevent the minister from signing. Ellicott and Andrew Peacock, as Minister for Foreign Affairs, issued a joint statement saying that signature of the Convention was an important indication of ‘Australia’s policy of equality for women and the elimination of discrimination.’ Unfortunately little further progress was made towards ratification before the change of government.

Meanwhile, on the Opposition benches Senator Susan Ryan, as Shadow Minister was also increasing the pressure and introduced her Sex Discrimination Bill as a Private Senator’s Bill in 1981. This was a broad-ranging bill, drafted by long-time WEL member and barrister, Chris Ronalds. It was to give rise to two major pieces of legislation which Ronalds continued to advise on, the Commonwealth Sex Discrimination Act of 1984 and the Affirmative Action (Equal Opportunity for Women) Act of 1986.

It also became a major plank in the Labor Party’s election policy, endorsed by representatives of some 26 national women’s organisations with whom the party consulted in 1981, most of whom had participated in Beaurepaire’s UN Decade of Women consultation process. The momentum built up seemed unstoppable. In October 1982 the Coalition government finally announced its intention to legislate, although only in relation to the ACT and Commonwealth employment, and without undue haste.

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6 *Australian Foreign Affairs Record*, July 1980, p. 240.
With the election of the new Labor government in 1983, however, the way seemed clear for action at last. A Sex Discrimination Bill modeled on Chris Ronalds’ original Bill, but without the latter’s affirmative action provisions\(^7\) was introduced into parliament in June 1983. CEDAW, which was to provide some of the Constitutional basis for the Bill, was ratified in July. It obliged State’s parties to promote women’s equal enjoyment of human rights and freedoms in all areas of life, including education and employment. The High Court had confirmed in the recent Koowarta case that the federal government was able to use its external affairs power to legislate to meet obligations under international human rights conventions.

At about this time all hell broke loose. The Queensland co-ordinator of Women Who Want to be Women, Jackie Butler, who was also Chair of the Council for a Free Australia, a far-right organisation, mounted an extraordinary nation-wide campaign against ratification. This lasted long after ratification had taken place and flowed seamlessly into a campaign against what was called ‘the Sex Bill’. A propaganda sheet, circulated through church networks under the names of Butler, Dr A.Rendle-Short and Mrs Robyn Sully claimed that changes were already being made to the Bible to eliminate differences between masculine and feminine roles. Ratification of CEDAW would also lead to a nation-wide network of crèches and childcare centres, so that the state would have care and control of the child from infancy. Australia would be placed under the control of foreign powers and would no longer be free.

The propaganda sheet and the kind of letters it inspired, was helpfully read into Hansard by Liberal South Australian Senator Baden Teague in November 1983. The letters, typical of the flood of letters received by federal members of parliament, expressed fears that ratification would lead to the elimination of the ‘Judaeo-Christian’ family and to the Bible becoming a banned book.\(^8\) Earlier in the same month Senator Shirley Walters had claimed in parliament that ratification had already led to the headmistress of a Tasmanian

\(^7\) To give time for ‘community education’ on the meaning of affirmative action, popularly believed to mean quotas for women in employment and promotion, rather than the requirement that employers take action to identify and remove barriers to equal opportunity.

\(^8\) Senator Baden Teague, Senate Hansard, 29 November 1983.
school removing the Bible from the school library and burning it.\textsuperscript{9} National Party Senator Ron Boswell stated confidently that `The women of Australia do not want legislation that is drafted by the public servants of Mongolia.'\textsuperscript{10} Like a number of other Queensland politicians he believed the clamour for equality emanated from the Soviet bloc countries. The idea that the equality of women was a Trojan horse for communist subversion led to ASIO devoting resources to spying on Women’s Liberation groups in the 1970s.

Elaine Nile, of the Festival Light, took out newspaper ads saying `Stop the Ryan Juggernaut’ and made arrangements for busloads of supporters to come to Canberra to demonstrate against the Sex Bill outside Parliament.

Demonstration against the Sex Bill, 1984

Supporters of the Bill were not sitting on their hands either. Pamela Denoon, the National Co-ordinator of WEL, stitched together a coalition of women’s organisations from across the political spectrum to support the Bill, ranging from the National Council

\textsuperscript{9} Senator Shirley Walters, Senate Hansard, 8 November 1983.
\textsuperscript{10} Senator Ron Boswell, Senate Hansard, 29 November 1983.
of Women through to the Union of Australian Women. In Parliament Susan Ryan was constantly on her feet to defend the Bill and introduce the 53 amendments intended to placate opponents. Apart from the spectres of communism and Bible-burning, there was opposition to intrusion on the rights of States and the rights of churches to discriminate. A second Bill was introduced in late 1983 to incorporate the changes. WEL made a last-minute save to ensure the new draft actually included employer liability for sexual harassment. WEL also distributed a practical Guide to the new Bill, prepared by Sydney WEL members including June Williams, later to be Western Australian Equal Opportunity Commissioner.

Apart from action at the community level there was also staunch support from Liberal parliamentarians such as Senator Kathy Martin, and from Ian Macphee, who publicly denounced the ‘hysterical and mischievous’ campaign against the Bill. 11 Australian Democrat Senator Janine Haines was another eloquent supporter, as was National Party member Tom McVeigh, who had ministerial responsibility for the Office of the Status of Women immediately before the change of government. He was to be one of only two National Party members to support the Bill. The parliamentary supporters were duly acknowledged at the large WEL celebration party held outside Parliament House on the day the Bill finally passed on International Women’s Day 1984. The parliamentary champions of the Bill joined with members of women’s groups in drinking champagne and eating the purple, green and white cake in the shape of the women’s symbol.

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11 Ian Macphee, ‘The Sex Discrimination Bill: A Liberal View’, Address to the NSW Division of the Liberal party, 17 September 1983. Macphee had become well-known for his actions in pursuit of equal opportunity for women as Minister of Employment and Industrial Relations in the final phase of the Fraser government. In January 1983 he sent away State treasurers and ministers for labour in town to collect their share of the $200 million wage-pause fund, because their proposals mainly consisted in creating jobs for men. Macphee told them to come back in a month with proposals that would create an equal number of male and female jobs.
Perhaps this is the point at which to tackle some of the myths about the Sex Discrimination Act, which have taken on a life of their own and are reproduced in one source after another. The first is the myth that that the parliamentary debate over the Sex Discrimination Bills was ‘the longest in the Senate’s history up to that time’\(^\text{12}\) Of course this is nonsense in terms of the history of the Senate. But even if we take the period from World War II until 1984 the debate on the Sex Discrimination Bills was only the eleventh longest debate. The Senate Table Office maintains a statistical record of hours spent in consideration of Bills. While there were 17 hours of debate on the Sex Discrimination Bills there were almost 70 hours on the two Communist Party Dissolution Bills, almost 56 hours on the Commonwealth Bank Bills, 28 and a half hours on the Family Law Bill and 27 hours on the Customs Amendment Bill (No 2) 1979.

\(^{12}\) Susan Ryan, *Catching the Waves: Life in and out of politics*, Harper Collins, 1999, p.242. See also Anne Summers, Introduction 2\(^{nd}\) revised edition of *Damned Whores and God’s Police*, Penguin, p. 17: ‘The 1984 debate remains the longest in the history of the Australian parliament’. (In the first ten year years of the federal parliament the average time spent debating each Bill was 25 hours, considerably longer than was devoted to the Sex Discrimination Bills.)
Another myth which has received a wide airing is that having been the foremost proponent of the Bill, the Women’s Electoral Lobby then attacked it on the day it passed through parliament. It is said that two spokeswomen for WEL, an organisation whose ‘long-standing top priority had just been enacted’, appeared on the 7.30 Report with Susan Ryan and described the Sex Discrimination Act as ‘useless, an insulting token’.13 As you can see from the image of the WEL party thanking Susan Ryan and other parliamentary supporters of the Sex Discrimination Act this again has no basis in reality.

It derives from a memory of a 7.30 Report segment after the passage of the Affirmative Action Act two years later, in which two young WEL spokeswomen said that while WEL welcomed the Act, the lack of sanctions was a major weakness. This is the role of a Lobby, to praise what has been done but explain how it does not go far enough. The sanctions were finally introduced in 1992—no industry assistance or government contracts for companies named for non-compliance with the Act.

Another myth frequently encountered is that 1980s feminists had a women’s rights-based agenda that did not take into account men’s needs for work and family rights. Here is the ‘Joe Average’ poster produced by the Office of the Status of Women in 1983 to promote ILO Convention 156 on Equal Opportunities and Equal Treatment for Men and Women Workers with Family Responsibilities.

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13 Ryan, Catching the Waves, p. 243.
I'm Joe Average
My family means more to me than anything else . . .

. . . that's why I share the responsibility for housework and caring for the kids.
Convention 156 was controversial simply because it did require policies enabling men as well as women to combine family responsibilities with paid work. It entailed family friendly work practices and conditions that would enable men to take a more equal role in raising their children. Although it was part of the Hawke government’s election policy in 1983 there were many delays in ratifying it, on the ground of State objections. It again became part of the Hawke government’s election policy in 1990 after a lot of pushing by ‘old-style’ feminists. This time ratification did occur and the Office of the Status of Women kicked off implementation with the ‘Sharing the Load’ community education campaign. This included the videos ‘Another Tuesday Night’ and ‘Any Wednesday’, which are brilliant discussion starters, highly commended by the UN and worthy of rediscovery. A Work and Family Unit was also established in the industrial relations portfolio to continue policy development on conditions and practices that enabled both parents to combine family responsibilities with paid work—a unit abolished in 2003.

Meanwhile, to return to August 1984 and the first Sex Discrimination Commissioner, Pam O’Neil, who had been a founding member of WEL Darwin. Although critics claimed the Act would mainly be of benefit to middle-class women, O’Neil’s experience in the mid-1980s was that it was ordinary women in traditional, relatively low-level women’s occupations, in offices and shops, who used the legislation to seek redress. Indeed the Act has probably had its most wide-reaching impact on women’s experience of the workplace. All of us with experience of low-level jobs before 1984 know the kind of sexual harassment and sexist putdowns of women employees that were a normal part of that experience. A mock-up of a used tampon on the work-bench of a new apprentice in the print-room at the ANU was one of the many examples I encountered when developing the EEO program for the Australian National University. One of the most important functions of the Sex Discrimination Act has been to raise women’s expectations that they will receive equal treatment in the workforce.

The argument that equal opportunity for women is a middle class or elite agenda is part of a broader campaign of denigration against all supporters of human rights and equal opportunity. Concern for equal opportunity is presented as part of the contempt displayed
by elites for the values of ordinary Australians. This discursive strategy emanates from America. It creates a populist ‘Us and Them’ divide between a so-called elite that wants to spend public money on items such as ramps for the disabled and ordinary taxpayers who just want to pay off their mortgage. Not only does this distract attention from the very real social and economic inequalities that continue to exist in our society but constructs a strangely feminised elite. The most active supporters of equal opportunity and human rights have often been groups such as teachers, librarians and social workers—quite different from the elites we have been accustomed to, who did not even want to let women into their clubs!

And let me finish with an image of just one of the new employment opportunities opening up to women following the passage of the Sex Discrimination Act.

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14 For a full account of this discursive strategy and how it has been promoted in Australia see Marian Sawer and Barry Hindess (eds), *Us and Them: Anti-Elitism in Australia*, Perth, API Network, 2004.
Lynne Simons, first woman to be Serjeant-At-Arms in the House of Representatives, leading in the first woman Speaker, Joan Child in February 1986.

Women have travelled a long way in a parliament which would not even employ a woman for the job of Hansard reporter until 1969, despite the shortage of men with shorthand skills. We cannot, however, rest on our laurels. Twenty years after the passage of
the Sex Discrimination Act it would be timely to again review the effectiveness of our Commonwealth sex discrimination and equal opportunity legislation, just as was done to mark the fifth anniversary of the Act. The review initiated then, which resulted in the Lavarch Report, *Half Way to Equal*, is well known as a milestone in the evolution of the Act. Then as now there is much to be learned from the innovations progressively introduced into equal opportunity legislation in other jurisdictions around Australia—one of the glories of federalism. A reference to the Senate Legal and Constitutional Affairs Committee would be a very appropriate birthday present for the Sex Discrimination Act.

Thank you all.