

Opening Address II

Hon. Susan Ryan AO

It is reassuring to me as a former legislator—and one who copped more than a fair share of controversy—that the conference on which this collection is based is being held to mark the twenty-fifth anniversary of the *Sex Discrimination Act 1984* (Cth) (*SDA*). To those who believe that it is the basic responsibility of Parliament to use its legislative powers to advance fairness and justice, the *fact* of this conference is reassuring in itself. Of the many hundreds, perhaps thousands of bills passed in the 13 years that I sat in the Senate, very few have attracted positive attention and significant reconsideration 25 years after gazettal.

Why does the *SDA* continue after 25 years to attract this attention?

Because it addressed fundamental inequalities and unfairness, it did so with considerable effectiveness and it has produced outcomes that can easily be measured to establish success. The numbers always help.

It did change Australia—for the better. Such laws deserve the continuing attention of senior academics and activists alike. So I congratulate Margaret Thornton and all who have made the conference happen.

It is more than a coincidence that the last time I stood at a podium in Old Parliament House was in December last year, to mark the anniversary of another, even more significant legal initiative: an instrument aimed at improving justice and fairness *globally*.

Last December, we held a forum in Old Parliament House to mark the sixtieth anniversary of the Universal Declaration of Human Rights. We did that on the eve of the announcement by Attorney-General, Robert McClelland, of a national consultation to report to government our community's views and wishes in relation to a Human Rights Act for Australia. I hope, as do many Australians, that the release of the national consultation report will lead to a new Act of the Parliament that puts into national law all those responsibilities Australia agreed to when we signed up for the Universal Declaration 60 years ago and the major UN human rights instruments—civil and political, economic and social—and the other conventions that were built on the Universal Declaration's strong foundations.

As well as all these broad protections, a Human Rights Act would strengthen and reinforce the effectiveness of the *SDA* and reach even further in combating sex discrimination.

But let us go back 25 years, when we lacked both an umbrella Human Rights Act and any specific national protection of women against the sex discrimination that was widespread and extremely destructive. Entrenched sex discrimination, especially in education, employment and the economy, had produced extensive poverty and other serious disadvantage among female Australia. Australia had the most sex-segregated labour market of any Organisation for Economic Cooperation and Development (OECD) country, so that women were in general restricted to work ghettos of low pay and poor conditions. No woman had sat on the High Court or headed a university, a Commonwealth department or a major corporation. By 1984, only two women had held cabinet posts in a federal government.

A number of factors explain the dramatic move from where we were in 1984, with no national protection, to where we are now, marking 25 years of the *SDA*, living in an economy in 2009 in which women are everywhere, including in many (though not enough) leadership positions. The *SDA* was crucial to this change. Many individuals played a role in achieving this progressive measure: my own parliamentary colleagues in 1983–84, as well those expert lawyers who helped put our political objective into a constitutionally robust and workable law.

The most important of those lawyers is Chris Ronalds AM, SC. Chris had the dedication, skills and imagination to draft the original Private Member's Bill (1981), which I introduced while in opposition to prepare the way, and her work was crucial in securing the form of the much amended Bill that eventually became the *SDA*.

We worked together but our roles were different; mine concerned politics—the politics of reform. Fundamental to my purposes in entering Parliament was the belief that I should, with my colleagues, use all available powers of the Parliament to reduce discrimination and promote fairness and equality. As I saw it, that was at the core of what I was elected to do. Of course, we had other tasks: deregulating the economy, restructuring the labour market, remaking foreign, defence and social policy—all massively important but none more so than fighting discrimination against women. Coming as I did from the women's movement, I was aware on every level of widespread sex discrimination that kept women out of good jobs, severely limited their income and standard of living and reduced their lives to unhappy and unhealthy servitude.

Redistributing power and opportunity is an objective that always provokes resistance and hostility. Those who are well served by the status quo will do

everything they can to hang on to their advantage. And so it was with the *SDA*. The ‘re-enactment’ was a reminder of what lengths—of absurdity and vitriol—our opponents, inside and outside the Parliament, were prepared to go to to maintain the inferior position of women in all aspects of our public and private lives.

For younger people, looking back on it all now, it seems unbelievable that there was such vicious opposition to a law that in essence required simply that women should not be sacked or refused education, loans or leases simply because they were female, pregnant, married or unmarried as the case may be. But the opposition was intensely serious. The ‘Ryan Act’, as it came to be called—as a term of abuse—represented change at a basic level of society and resonated with all the fears of the dominant groups that their values would have to be modified a little to make way for fairness and give women a chance to contribute on the basis of merit.

Who were our opponents?

Business large and small feared having to pay female workers more; the commercial media saw the chance to sell more papers and increase advertising revenue by stirring up fear of change; conservative politicians of all kinds saw a direct link between my modest proposal and the communist USSR and its tyrannies. Churches, including the ever-powerful Catholic Church, were concerned about maintaining their discriminatory employment rights—and they did. The trade unions were not entirely shoulder-to-shoulder with us, though most were.

Many women were opposed. The wonderfully named ‘Women Who Want to be Women’—the ‘4Ws’—were numerous, vociferous and very well organised, arranging for thousands of petitions against the Ryan Act to be shovelled into the chambers each day, typically on pink paper. Other women’s groups of the right saw the idea of removing sex barriers to jobs as scary and undermining of their comfortable stay-at-home arrangements with their husbands.

On the left, the Women’s Electoral Lobby (WEL) was strongly in support, but other feminists decided we were compromising too much and that an imperfect law was worse than no law. Although I had and still have friends—scholars I admire—who took this view, I have to reject it.

In our sort of democracy, with our parliamentary structure of two chambers in which the government rarely controls the Senate, perfect laws are not possible. Radical or progressive reforms will always need to be modified. Ask Penny Wong! Our Bill was a quintessential example of this reality: in its first consideration in the Senate, it attracted huge numbers of amendments—some

good, some loopy. We had to deal with them all. We withdrew the Bill and redrafted it, and re-presented what we judged was a fair compromise. No go. Dozens more amendments had to be negotiated.

We recognised the realities of our circumstances. In an atmosphere in which the milder predictions of the effects of the Act included

- the death of the family
 - the destruction of the labour market
 - the wrecking of the economy
 - the end of marriage
 - the imposition of compulsory 24-hour child care
 - the collapse of Christianity
- the Bill was passed.

It became an act and was gazetted and in operation by August 1984 (with, I must confess, none of those predictions coming to pass).

Since all that drama, the *SDA* has provided effective protection to women for 25 years. At this point, I must acknowledge the terrific work of all the sex discrimination commissioners, including our much admired Governor-General, Quentin Bryce AC. They implemented the protections with total commitment, imagination and skill, as does the current Commissioner, Elizabeth Broderick.

The huge numbers of complaints conciliated each year, the rarity of court hearings and the valuable amendments generated by two major parliamentary reviews illustrate how well evolutionary reform of this kind can work. Despite two attempts to reduce the coverage of the *SDA*—one by the Catholic Church in relation to its proposal for male-only teacher scholarships and one by the Howard Government seeking to exclude single women and lesbians from access to IVF—the Act has never been weakened. Does it need to be further strengthened? I expect we all would say yes. I hope that the recommendations from current Commissioner Broderick to the recent senate review will be adopted.

My point is this: *we are better off since 1984 having the SDA, with all its imperfections, than we would have been without it.* I cannot state too strongly my belief that Parliament must seize the day, use its powers and deliver what it can of value to the people. Where reform is urgently needed, it is not an acceptable strategy, in my view, to wait for complete consensus or to defer a bill until its drafting is beyond any criticism. Such pursuit of the perfect constitutes a failure of representative democracy.

Compromise, accepting less than useful amendments as a trade-off to secure the main objectives—well, if that is what you have to do, do it. Of course, academics and other experts should continue to point to weaknesses and flaws and call for better, but not to the point of actually obstructing a generally needed and wanted reform.

As I make these assertions, I am struck by the parallel situation we seem to be in between the story of securing the *SDA* and the story to date of the yet to be achieved Human Rights Act. With the human rights consultation, again we have a high-temperature public debate, lots of controversy, passionate supporters and opponents, a measure of genuine disagreement among serious lawyers and lots of fear tactics and exaggerations, amplified by a relentlessly negative campaign by *The Australian* newspaper.

The Hawke Government in 1983 had the boldness to discount critics and take legislative action. Will the Rudd Government show similar leadership and purpose and introduce a Human Rights Act? We do not know yet, but we live in hope. Just as 25 years ago, all women needed protection against damaging discrimination, all of us now need a law to embody our basic human rights and to protect vulnerable individuals against violations of these rights by state power.

I am convinced that all of us—who, undeterred by controversy and wild criticisms, put our shoulders behind the achievement of the *SDA* one-quarter of a century ago—did the right thing by the people. Not too many would disagree these days. I do not even hear any whinges from the 4Ws.

I conclude by stating the hope that the *SDA* is not only recognised and maintained for the next 25 years as a vital reform in its own right, but that it can serve as an inspiration and practical example to today's legislators, so that the valuable impacts of the *SDA* will soon be reinforced by a Human Rights Act for Australia.