



Susan Ryan AO - Introductory Remarks to the NSW Society of Labor Lawyers

Event: Susan Ryan AO in conversation with Yasmin Catley MP on the Hawke Government's Law Reform Achievements, 11 September 2019

Thanks for the invitation to address NSW Labor Lawyers on the topic of law reform and the Hawke Government.

My argument that worthwhile law reform is always hard to achieve, and even harder to achieve for the long term. To support this view I will comment briefly on three major legal reforms of the Hawke administration, three laws which had differing impacts immediately and long term.

I believe they demonstrate the massive challenge of making progressive law reform, and the necessity, for those of us committed to progressive change, of continuous effort and ceaseless vigilance.

The Hawke era is now recognised, and indeed praised as a great era of big and important reforms. Most of the public praise goes to our reforms of the economy.

I suggest that our social reforms were equally transformative, and of similar importance to our economic changes, but rarely recognised as such.

I also note at the beginning of our discussion, that currently we find ourselves in a law reform landscape that is sparse indeed. We seem in fact to be experiencing drought in this area just as we are in our weather. And the absence of progressive law reform can be as damaging to our community as the absence of rain.

I will start with reference to the law that in 1983 stopped the flooding of the Gordon and Franklin rivers in Tasmania.

That decision, an early one of the Hawke government, was the result of years of on the ground campaigning by environmentalists, inside and beyond the Labor party and especially but not only in Tasmania. The activists were totally committed, often very young, in many cases even prepared to live in the forests as ferals.

Federal Labor in opposition pledged to stop the flooding and the construction of a new dam but many doubts were raised as to our legal capacity to do this.

Once in office (and all Tasmanian seats were lost by Labor) we immediately legislated to stop the dam. We enacted the *World Heritage Properties Conservation Act 1983*. This law was challenged by the government of Tasmania in the High Court, the *Tasmanian Dam Case*. We had utilised the relevant UN convention as the basis for our constitutional power in this matter. The High Court agreed with this use. The Hawke Labor government had an early law reform victory.

It was a huge victory, not only for the environment in Tasmania, but establishing constitutionally how a reforming federal government could equip itself to deliver national benefit, even when it needed to overrule state powers to do so.

Since then, international treaties provided the means for further actions to protect the environment and for other major reforms including the *Sex Discrimination Act 1984*.

The use of these powers is no longer contentious. Conflict with State governments does still come up and can be hard to resolve, as in the ongoing Adani mine dispute.

But the short and long term benefits our decision to block the building of the Franklin dam are widely recognised. This was, by the way, quite a popular decision, except in Tasmania, and not difficult in terms of public presentation.

My second example is our reform of Australia's constitutional links with the UK. Some of these links, though not used, had hung on since we federated in 1901, remnants of our colonial status. By proclaiming the *Australia Act 1986*, all formal constitutional ties with Britain were severed.

This was a satisfying action for our government. The reform, important though it was, was not the result of community campaigns or grass roots pressure. I doubt many in the community took much notice.

It was advanced by the constitutional lawyers in our cabinet, Gareth Evans in particular.

The rest of us welcomed it as a necessary legal expression of Australia's real constitutional independence. It was not controversial.

The after effects were extremely disappointing. This act should have been the lead in, the constitutional housekeeping preparing us for the securing of an Australian Republic, with an Australian head of state a necessary consequence. It didn't. Not then, and still not now. We are still waiting, and community action to move to a republic, though energetic, is not at this stage successful in attracting anything like enough support to achieve the objective.

My third example is the *Sex Discrimination Act 1984*.

This reform was achieved after many years of commitment by Labor, years of consultation with Australian women from all backgrounds, and success in getting this policy squarely into Labor's national platform, and into our 1983 election commitments.

The story of getting there is long and tortuous.

I will just point to a few key aspects that have led to the overall success, the continuing relevance and sustainability of this reform.

Preparation: In 1981 I introduced into the Senate a private members bill making sex discrimination in a range of areas unlawful. It was not debated but it signalled what Labor in office would legislate and prepared the way for the Sex Discrimination Bill, introduced in 1983

Comprehensive policy underpinnings: To successfully open up women's economic options, making sex discrimination unlawful was necessary but not sufficient. We needed policies including childcare, workforce training, and access to all levels of education to be firmly supported as well. Under the Hawke program and facilitated by the Accord with the trade union movement, they were.

The reform, the *Sex Discrimination Act 1984* met a widely recognised need.

Up to 1984 women were sacked, refused employment, refused promotion or training opportunities, because they were married, pregnant or just because they were women. All this was lawful, and widely practiced.

As a consequence women often struggled to survive economically especially if they were supporting children.

Even though the widespread damage of sex discrimination, including the damage to our economy, should have been evident to all, opposition to this reform from conservative forces, in the parliament, in the media and in the community was virulent and ubiquitous.

If you can imagine the worst of the same sex marriage debate, the hysteria and disruption of the current so-called religious freedom debate, add them together and you might get some sense of the opposition to the law, and in fact to me, personally.

We prevailed. Permanently it would seem. The *Sex Discrimination Act 1984* has been reviewed and criticised. It has never been repealed. Any amendments made have expanded its protections and strengthened it.

From August 2013, its objects were amended to include prohibition of discrimination on the grounds of sexual orientation, gender identity or intersex status.

But here is a warning regarding progressive law reform.

In order to secure the passage of the initial Bill in 1984, we had to agree that church schools could be exempt in terms of who they hired as teachers. Church schools continued to be lawfully able to employ as teachers only those whose values fitted with the particular religious tenants of the church operating the school.

I regretted that compromise at the time.

I regret it more now that these fairly restricted exemptions, or so we intended them to be, are being inflated to provide the basis for the demands of some religious groups that they be entirely free of any applications of anti-discrimination measures, and in addition that this required freedom to discriminate be expressed in a statute.

I can only express the hope that parliament as a whole does not accede to these entirely undemocratic and unreasonable demands.

Before we move to responses I would just draw a few contrasts between the *Sex Discrimination Act* and the now published draft *Religious Discrimination Bill*.

In the case of the *Sex Discrimination Act* it covered directly at least half of the population, who suffered well documented damage from sex discrimination, especially in the workforce. The need and the relevance to the Australian community were not in question.

In the case of the draft religious discrimination bill, there is no consensus around its objectives, even by religious spokespeople. A need for further legislative protection against religious discrimination has not been established. A range of existing measures, including section 116 of the Constitution, most state and territory anti-discrimination laws and of course Australia's obligations under the UN International Covenant on Civil and Political Rights protect individuals' religious rights. The *Fair Work Act 2009* prohibits discrimination on the grounds of religion in the

workplace. The *Race Discrimination Act 1975* has provided a basis for complaints to the Australian Human Rights Commission from individuals on the basis of religious discrimination. I cannot at this stage see evidence that individuals in Australia suffer discrimination on the basis of their religion such as would require further legislative protections.

While there was a very long and widely supported campaign in the lead up to the *Sex Discrimination Act*, during which the objectives, the coverage, the processes, the economic implications were all considered and progressed, the “religious freedom” initiative appears to have appeared on the legislative agenda quite suddenly, and only in response to those few Coalition members frustrated at their failure to stop the legalisation of same-sex marriage. The Ruddock inquiry into religious freedom 2018 could not conclude that religious discrimination was a matter that required further legislative action.

The Australian Law Reform Commission is further reviewing the current exemptions contained in the *Sex Discrimination Act*, so this matter is currently receiving appropriate attention. The ALRC may recommend further amendments to the exemptions.

This draft *Religious Discrimination Bill* is a reform for which in my view the need has not so far been established. In its draft form it has the potential to cause damage to some members of our community, the LGBTQ members in particular.

Should this bill in its current form be enacted, I cannot see that it would have a positive impact on the exercise of human rights by Australians.