



Celebrating 25 Years of the Right to Fly

No Australian woman would expect to be barred from her career just because she is female. Fewer, however, would know how much they owe to Deborah Wardley (Lawrie) and her landmark battle to become Australia's first female commercial airline pilot.

This year marks 25 years since Deborah won her case against the powerful Sir Reginald Ansett before the High Court. It was the first complaint before the newly established Victorian Equal Opportunity Board (now Equal Opportunity Commission) and the first contested anti-discrimination case in Australia.

Sir Reginald Ansett was vehemently opposed to women pilots and had a history of public chauvinistic comments. He had publicly opposed women's admission to the members' section of the Melbourne racecourse and raised a public furore in 1975 when, in the midst of a strike by air hostesses over wages, conditions and maternity



Deborah Wardley

leave, he referred to members of their executive as a 'batch of old boilers'. It was only a few years earlier that hostesses were still obliged to resign when they married or reached the age of 28.

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Farewell to Commission Member Lawrie McCredie



The Commission has
farewelled part-time
Member, Lawrie McCredie
who was first appointed
to the Commission
in 1999. During his
five years he worked

tirelessly considering and making decisions
on complaints. He was also involved in the
policy setting and strategic direction of the
Commission. In particular, Lawrie helped
to establish the Commission's disability
outreach program.

We wish Lawrie well in his future endeavours.



Linda Burney, MP

Forum on Human Rights and Indigenous Issues

VIEW

The following is an edited transcript of the speech given by Linda Burney, MP at the forum.

Can I begin by recognising the Kulin nation and pay deep respect to the history and cultures of the peoples of that nation.

Yesterday morning I was at the University of NSW talking to an international group of Indigenous young people. They had been here for ten days, at the Oxfam international youth parliament in Sydney. I spoke to them about some fundamental issues to do with human rights, about self-determination and the fact that what's going on now in Australia has rendered that term meaningless. If there's anything that we take away this evening it's that message.

I also spoke to them about how debilitating a time, how distressing a time it has been for me personally as an Indigenous woman who has worked in Indigenous affairs for a quarter of a century. In that quarter of a century I cannot think of another time when we have been under such constant attack and whittling away of the many gains that we have together, forged over the last twenty-five years. And I spoke to them about how I see reconciliation, and in essence, this is the scorecard that I measure things against. I see reconciliation, in three handfuls.

Firstly, there is the handful that could be described as in some ways the handful that has touched every one of us as Australians, the handful about the journey of walking together, working together and most importantly it's the handful where we learn to accept our truth, to understand our history and have the capacity to own *both* of those things. I would describe that as the first handful of reconciliation.

The second handful is what I would describe as social justice. And social justice of course, is really the measure of how we are progressing in real life ways in terms of reconciliation. And social justice *is* the issue of incarceration. Social justice is the issues of housing, the issues of educational outcomes, the issues of well-being of health and that handful is a handful that is far from being complete in this country.

I suppose as an Aboriginal woman and an Australian really, this is the one area that I find the most disturbing, the most baffling, the most difficult to understand of all of the issues swirling around in Aboriginal affairs. How is it, that a first world nation like ours, can have this industrial deafness about the shocking outcomes of lives of no choice and no chance for most Aboriginal people. How is it that this exists in

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our nation? The impacts and figures are not statistics for Aboriginal people; these are our mothers, our fathers, our sisters, our brothers and our children.

In the last three weeks (and I'm not saying this to be dramatic), I have been to six burials. The most sad and tragic of all of those, was the family that was burnt to death in a housing commission home in Matraville. The family was Aboriginal, they died because they were poor. They died because they didn't have enough blankets and they were sleeping around a heater in the lounge room – three little kids and their mum - their dad's in jail. This is the reality. This is the daily reality of the shoes of Indigenous people in Australia. It's wrong that my life expectancy is sixty-six and my non-Aboriginal sister is eighty-eight, but it doesn't move people. And somehow or other, it doesn't seem to move governments. There is not that kind of discussion unfortunately.

The last handful of reconciliation; is what I call the handful of rights. I'm no great academic - but I spend a lot of time out in the community. This issue of the handful of rights is so related to the other two handfuls, but the handful of rights in my world has three parts to it.

It firstly has the part of citizenship rights. Citizenship rights that we all should be able to enjoy and access equally. And this is particularly important in a symbolic plus a real way for Indigenous people. I was born in 1957 and for the first ten years of my life in NSW, did not have citizenship rights. The simple fact is that Aboriginal people do not equally enjoy our citizenship rights, including clean water, schooling, housing.

The second part of this handful which is so inter-related of course, is our human rights.

But the third set of rights is something that you don't hear in public discourse anymore. And those are the inherent rights that we should be able to enjoy as the first peoples of this country. I can't think of the last time I was anywhere where there was any discussion on that set of rights. Our rights to culture, our rights to language, our rights to country

– inherent rights because of our status as the first peoples. I don't even think that registers out there in the Australian community as a set of rights.

Now people can have the discussion about whether or not the ATSIC commission did or did not do the right thing – that to me is not the issue. The issue is this; that whatever people thought of ATSIC, the regional structure of ATSIC is not responsible for what took place nationally. The regional structure of ATSIC is so fundamental to Indigenous communities – both as a place for advocacy, but more than that, where do we grow our leaders now? Where do we take our issues now? The point that I am making is that what has happened in this country, and we've all watched it and got distressed about it, is that the places for our voices to be heard have been shut down slowly and surely.

I've got a theory that may be completely dopey, but let me run it past you: I think that we don't think enough about our history in Australia and perhaps this is a hint to the sort of challenges that we have. It seems to me that we are a nation that was founded from a non-Aboriginal perspective on a lie. And that was the lie of Terra nullus – that this was an empty land. And that was how our relationship started, what a bloody horrible start to a relationship! It was only in 1993, through the Native Title decision, where it was actually recognised that that was wrong, that was a falsehood. So recognition of Aboriginal prior occupation has really only been since 1993 in a legal sense in Australia.

So I didn't get to all of the sorts of things I wanted to talk about. I actually have here, an article on the aftermath of the Redfern riots and the rights of children within that context and also the final chapter of the recommendations of the Council for Aboriginal Reconciliation that went to the Australian Government in 2000. There are only six recommendations which chartered the way forward for us as a nation. Guess what? Have a guess how many have been implemented? Bigger all.

Linda Burney, MP

Human Rights, values, freedoms and the Australian Way of Life

The Commission held two more forums in its series on human rights, values, freedoms and the Australian way of life. The forum in July focused on Indigenous issues while the forum in September looked at the Australian way of life.

Human Rights and Australian Values – Indigenous issues forum

On 14 July, the Commission held its second forum at the Melbourne Town Hall on Indigenous issues, titled “Human Rights and Indigenous Victorians, Recognition and Reconciliation: where to from here”.

With the Senate Legal and Constitutional Reference Committee declaring that reconciliation is “off track” and the proposal to abolish ATSIC, the forum was convened to allow people to hear what this means for relations between Indigenous and non-Indigenous people and how the voice of Indigenous Australians can be heard. Guest speakers Professor Mick Dodson, Linda Burney MP, and Professor Ann McGrath provided a unique perspective and insight into the status of Indigenous affairs today and how best to move forward.

See page two for a copy of the speech given by Linda Burney, MP at the forum.



TOP: Professor Ann McGrath, Professor Mick Dodson, Linda Burney MP and EOCV Chairperson Fiona Smith, speaking at the forum.

LEFT: Professor Mick Dodson

Human Rights and the Australian Way of Life

On 22nd September the Commission held its third forum titled “Human Rights and the Australian Way of Life”. The forum heard from Social Researcher Irving Saulwick and Professor Marian Sawer from the Australian National University. The forum focussed on comments made by politicians, commentators and letter to the editor writers who suggest the Australian way of life is under threat. The speakers examined what we mean by the Australian way of life, what our values are and how they have changed over time. There was lengthy discussion on these issues and how human rights are linked to our values and way of life.

Copies of the speeches given by Irving Saulwick and Marian Sawer can be found at www.eoc.vic.gov.au.



Professor Marian Sawer, Irving Saulwick and EOCV Chairperson Fiona Smith, speaking at the forum

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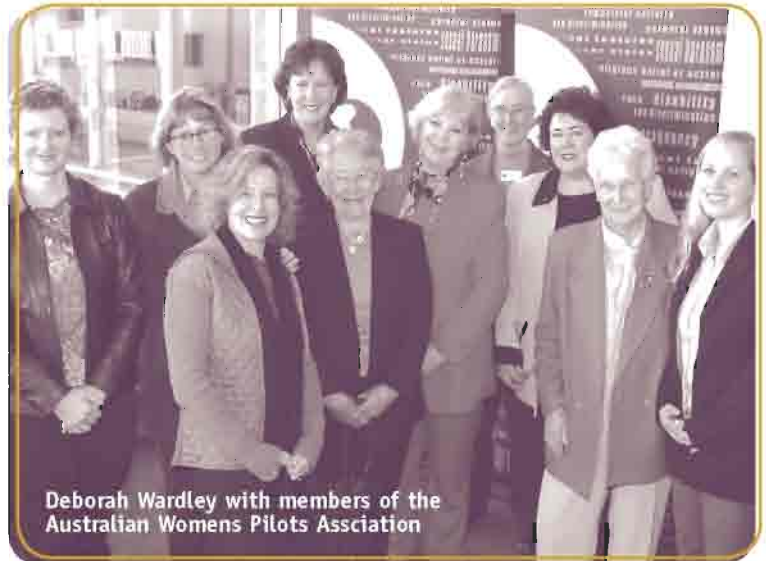
Ansett's objections to the employment of women as pilots:

- That pilots needed strength – there was no strength test for pilots
- That unions would object – they didn't
- That women's menstrual cycles made them unsuitable – disputed by gynaecologists
- Pregnancy and childbirth would disrupt a woman's career to the point where it would jeopardise safety and incur extra costs for the company.

The case divided public opinion and attracted enormous attention. Women's groups launched boycotts against Ansett, which resulted in a massive drift of passengers away from the carrier.

In June 1979, the Equal Opportunity Board found that Ansett had discriminated against Deborah Lawrie. The Board said that the childbearing potential of women should not be used as an excuse to limit women's role in society. That "anatomy should not be destiny". The case went to the Supreme Court before Ansett appealed to the High Court. On March 4 1980, the High Court dismissed the appeal with costs awarded against Ansett.

To celebrate the 25th anniversary of Deborah's win, the Commission held two events, a morning tea with the Australian



Deborah Wardley with members of the Australian Womens Pilots Association

Women Pilots Association at Tullamarine Airport and the official celebration followed by lunch in Melbourne. Both events attracted widespread media and public attention.

Now living in The Hague, Ms Lawrie returned to Australia to celebrate her historic win. Speaking at the official celebration she said she was surprised at how little had changed since her case attracted international headlines. She said Australia lagged behind European countries in addressing sex discrimination, maternity leave entitlements, sexual harassment and sexist attitudes towards women. ③

Annual Victorian Human Rights Oration

Each year on 10 December, United Nations Human Rights Day, the Commission holds the Victorian Human Rights Oration.

The Commission is pleased to announce that the speaker for the 2004 oration is Dr. Rhonda Galbally, AO. Rhonda Galbally is the founding chief executive of Our Community, a pioneering online organisation set up to offer practical resources, support and linkage between Australia's 700,000 community groups and the general public, business and government. She has also recently

been appointed as the Chair of the Disability Advisory Council of Victoria. The Council is the first made up entirely of people with disabilities or parents with children who have disabilities.

Please join us at the Melbourne Town Hall on the 10 December 2004 to hear this important oration. For further information or bookings contact Dianne Williamson on (03) 9281 7106, email: Dianne.williamson@eoc.vic.gov.au or TTY (03) 9281 7100.

This is a free event. ③

Submissions made by the Equal Opportunity Commission

The Commission has made the following submissions to various state and federal Government Inquiries. Copies of the submissions can be found on the website www.eoc.vic.gov.au/submissions.

- Submission to the Senate Inquiry into the *Marriage Legislation Amendment Bill 2004*
- Submission to the Victorian Parliamentary Scrutiny of Acts and Regulations Committee's enquiry under Section 207 of the *Equal Opportunity Act 1995*
- Submission to the Victorian Law Reform Commission in relation to assisted reproductive technology and adoption eligibility criteria

Findings of the Productivity Commission's review of the *Disability Discrimination Act 1992*

In July the Productivity Commission released its final report of the Review of the Disability Discrimination Act 1992 (DDA). This report examined the DDA's progress in eliminating discrimination over the past decade and explored ways to improve its efficiency and effectiveness.

The report found:

- The DDA aims to achieve substantive equality, meaning that differential treatment is required for people with disabilities where this is necessary to achieve equal access to opportunities available to people without a disability
- The DDA has been more effective in eliminating disability discrimination in education, access to new buildings, accessibility to public transport and some goods and services than in the area of employment
- The DDA appears to have been more effective for people with physical or sensory disabilities than those with a mental illness, intellectual disability, acquired brain injury, multiple chemical sensitivity, chronic fatigue syndrome, multiple disabilities and people with disabilities from indigenous or non-English speaking backgrounds, and those living in regional areas
- The DDA meets the requirements of competition principles and any restrictions on competition that the DDA imposes at present are most likely to be negligible, outweighed by the net community benefits the current legislation produces
- Non-regulatory approaches can complement the operation of anti-discrimination legislation, but cannot be satisfactory alternatives for it
- State and Territory anti-discrimination laws can complement the operation of the DDA but cannot substitute for it.

The Productivity Commission concluded that the DDA had been reasonably effective in addressing disability discrimination, but it still has a long way to go. In particular, it recognised that the nature of the challenges facing the DDA are changing as the focus shifts from addressing physical barriers to attitudinal barriers. The Productivity Commission believed that making the changes to the DDA, as recommended in the report, will for the most part, help to improve the experiences and opportunities of people with disabilities.

Recommendations

Various recommendations were made to improve the effectiveness of the DDA in eliminating discrimination against people with a disability, including:

- Amending the DDA to include a general duty to make reasonable adjustments for people with disabilities
- Extending the unjustifiable hardship defence to all areas covered by the DDA
- Expanding the definition of disability to include conditions that have medically recognised symptoms and genetic predispositions to a disability
- Amending the definition of direct discrimination to clarify 'circumstances that are the same or not materially different'
- Amending the indirect discrimination provision to remove the proportionality test, include criteria for determining whether a condition is reasonable, require the respondent to prove reasonableness, and cover incidents of proposed discrimination
- Amending the 'special measures' provision to clarify that it exempts establishment, eligibility and funding of these measures
- Establishing formal arrangements between the Human Rights and Equal Opportunity Commission and State and Territory anti-discrimination bodies, incorporating a 'shop front' presence in each jurisdiction
- Amending the *Human Rights and Equal Opportunity Act 1986* to enable representative complaints where organisations have a demonstrated connection to the subject matter of the complaint.

The Commission's view

The Commission supports moves to increase the DDA's effectiveness in eliminating disability discrimination, improving the operation of the DDA and repositioning it as a positive force for change. The Commission will consider more closely the findings and recommendations made by the Productivity Commission with the view to identifying options in Victoria for improving compliance with disability discrimination laws, as well as promoting more effective redress mechanisms.

The Productivity Commission Report into the Review of the *Disability Discrimination Act 1992* can be found at the Productivity Commission website www.pc.gov.au and the EOCV submission to the inquiry can be found at www.eoc.vic.gov.au



LEGAL UPDATE

State of Victoria v Schou

The case

Deborah Schou is a parent with two children who worked as a sub-editor in the Hansard Department for the State of Victoria. Her younger child had health problems which impacted on Ms Schou's capacity to work full-time on site. Ms Schou made a request to work from home for part of the working week and asked her employer to install a fax machine and modem to accommodate this arrangement. This was never done and eventually Ms Schou resigned and lodged a complaint with the Commission of indirect discrimination.

Ms Schou was complaining about her employer's refusal to allow her to work from home two days per week (via fax and modem link-up) thereby forcing her to choose between her employment and her parental responsibilities. Ms Schou argued that it was unreasonable for her employer to insist upon her full-time attendance when she could easily and inexpensively work from home on the two least busy days of the sitting week, and when her managers had in fact agreed to the arrangement.

However, the Department argued that the need for full time workplace attendance during Parliamentary sitting periods was not indirectly discriminatory because it was necessitated by the inflexible demands on the Hansard department, namely, the highly skilled nature of the work, the very fast turnaround times necessary to produce transcripts, the work pressures on all staff and the need for them to work closely together, as well as staff shortages and the size of the Hansard department.

The decision

The Court found in the employer's favour saying that the existence of a reasonable alternative arrangement whereby Ms Schou could carry out her work did not, on its own, make full-time on-site attendance unreasonable, especially if:

1. Full-time workplace attendance is logical and reasonable to the needs of the employer and the duties of the job; and
2. The working from home arrangement was not as equally suited to the needs of the employer as full-time attendance.

In upholding the reasonableness of the full-time on-site attendance policy, the Court focused specifically upon the demands on Ms Schou's employer in delivering very timely and accurate services to the Parliament and Members of Parliament.

As the Court pointed out, employers need to consider flexible working arrangements and their appropriateness, in light of the workplace as a whole, and not just in the context of the situation of the parent or carer. Furthermore, the Court noted that if an employee has good reasons for not having to comply with a workplace policy, then this might more properly involve the exercise of managerial discretion, and seemed to suggest that this might have been a more appropriate response to an employee experiencing short-term difficulties.

The Commission's view

The Commission is of the view that employers should be cautious in drawing wider parallels between their own workplaces and the Court's consideration of Hansard's full-time on-site attendance policy. It should be borne in mind that Hansard is a very unique and small work environment, incorporating very demanding and highly specialised work requiring close collaboration amongst its staff. More generally, the benefits of flexible workplaces that assist workers to balance the competing demands of work and life outside of work have been, and will continue to be made evident, as workplaces evolve into the future.

SIMPLY YOUR RIGHTS

- in 19 different languages



As part of our ongoing review of all publications, the Commission has started redeveloping the material provided in community languages.

We have eliminated traditional brochures in favour of a new package of resources called Simply Your Rights. The Simply Your Rights kit will include information in a user friendly factsheet format and an accompanying CDROM.

The first factsheet in the series covers basic information on discrimination and vilification laws as well as the role of the Commission. A second factsheet on racial discrimination has also been developed. The printed factsheets and electronic copies on CDROM will be packaged into a handy kit and distributed to agencies who work with culturally and linguistically diverse communities.

Each year we will add a new factsheet to the kit covering a different aspect of anti-discrimination or vilification laws.

The materials will be provided in:

- Amharic
- Arabic
- Bosnian
- Chinese
- Croatian
- Dari
- Greek
- Italian
- Khmer
- Kurmanji
- Oromo
- Polish
- Russian
- Serbian
- Somali
- Spanish
- Tigrinia
- Turkish
- Vietnamese.

Focus testing with these communities has revealed great acceptance of the new format and the content of the fact sheets.

The Simply Your Rights kit will soon be available free from the Commission for community agencies working with culturally and linguistically diverse communities. To register your interest in receiving a kit contact Simone Elias (03) 9281 7109.

Individual fact sheets are available online at www.eoc.vic.gov.au

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An independent statutory body accountable to the Victorian Parliament