

11th Women Management and Industrial Relations Conference

Speaker - Quentin Bryce AO

20 July 1999

Susan,

Thank you for your introduction. One of the most exciting things that happened to me in my working life of more than 30 years was my appointment in 1988 as Sex Discrimination commissioner and one of the nicest things about the appointment was a telegram from Susan – “my proudest reform is in the very best of hands”.

Good morning friends and colleagues.

I am honoured by the invitation to participate in today’s reflection on Dr Clare Burton’s work, tackling Discrimination, Pursuing EEO. It is difficult for me to do so. Last year Clare and I shared this session at this conference. We’d been on many platforms together in the 20 years of our professional and personal friendship.

I listened carefully as she spoke to her paper on merit Gender and Corporate Governance. As I watched her I marvelled yet again at

- the thoroughness of her research
- the analysis of her data
- the power of her argument
- the strength of her reasoning
- the persuasion of her language
- the breadth of her references
- the detail of her bibliography
- the courage of her conviction
- her passion and her faith

She introduced her topic with a rather amusing and apt quotation from Lord Boothby, a very well known politician and company director. Boothby described his director’s role thus :-

“No effort of any kind is called for. You go to a meeting once a month in a car supplied by the company. You look both grave and sage. You say “I agree” three time and “I don’t think so” twice. And if all goes well you get ten thousand a year”.

I remember that as usual Clare ran out of time with her paper. She always had so much she wanted to say and she was always overly optimistic about how long it would take. Wind up signals were made to her in all directions. I had seen it happen many times before. When I got back to College I sat down to write to Clare to say how much I admired her latest piece of work and why hadn’t Ed Davis worked out that she was not a twenty minute speaker.

That paper was her last publication in an extraordinary list of books, reports, submissions, short monographs, chapters in books, review articles, articles in journals, papers to international/national conferences. Each one of them soundly based, each one of them underpinned by a strong commitment to social justice, each one of them thoroughly practical with clear directions for action. And all far reaching in their influence.

I have spoken and written of Clare's work on other occasions. I hope you will understand that I don't want to do so again today. Marion Sawer and Di Frewin are able to fulfil that role much better than I could. Clare's writing is a powerful legacy. It gives us a source of courage, support and inspiration to get on with what Clare would expect of us – the next steps in the struggle for equal opportunity in women's employment.

Clare used this conference many times to get her newest research and her political concerns on the agenda. I loved the way she did so with bursting energy and determination – shaking her finger at you as she made a point.

It was contagious!

Reflecting on Clare's work then gives me a sense of urgency about getting on with things. I think that Clare would be appalled by the undermining of reforms in some EEO areas and the slow progress in others. I want to talk about one with which I have particular concern – paid maternity leave. Surely the starting point for family friendly policies.

Perhaps I should begin with a little background. Many of you, like me, will remember the excitement and celebration in the women's movement when the test case establishing the principle of maternity leave was won. The case gave the right to unpaid leave and the right to return to the same job.

It signalled that you could have a family and a career. A significant even exhilarating advance. It was highly controversial. Employees were hostile especially in small business and I observe continuing antagonism today despite the fact that its incidence is extremely low. Many women workers still feel in 1999 that there is a stigma attached to maternity leave:

I felt everyone had ... discounted me completely because, 'Oh she's gone off to have a baby. Don't teach her anything new'.

I think that maternity leavers are sometimes disadvantaged. I know a lot of managers don't like it. They don't like women going on maternity leave and they don't like them coming back and going again.

As soon as you take time off instantly you're at a disadvantage. It's the way it is ... if you don't have children you're probably going to do better. It's one of the sacrifices you make.

For many women and their families unpaid leave is a luxury they could not possibly afford. Once the test case was won our plan was to work towards the goal of paid leave – real leave.

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognizes that maternity leave provisions are an important factor in reducing discrimination Article 11(2).

When the Australian government ratified the Convention in 1984 it reserved on two articles, Paid Maternity Leave and Women's participation in combat and combat related duties. But it was understood that there was a commitment to working towards withdrawing the reservations when Australia had put its house in order.

A related matter is Australia's non compliance with ILO Convention 103 on maternity leave. At present there are several features of that Convention with which Australia does not comply including compulsory periods of leave before and after birth, social security related benefits and provisions about breast feeding at work.

Australia does not meet the requirements of either of the 2 key human rights in employment Conventions in relation to maternity. The ILO drew attention to Australia's non compliance in its most recent report.

The fact that Australia is not a signatory to an international instrument dealing with maternity leave means there is no constitutional authority based on the External Affairs power for federal legislation on maternity leave, although ratification of ILO Convention 156 (Workers with Family Responsibilities) did provide a basis for leave after the birth of a child.

In 1999 Australia's legislative scheme regarding maternity leave is fragmented, complicated and inadequate and falls within state, federal and territory legislative provisions in the anti-discrimination, industrial relations, and occupational health and safety jurisdictions, and related health and social security arrangements.

The Australian Workplace Industrial Relations Survey (AWIRS) found that there is paid maternity leave in 34% of all workplaces with 20 or more employees (59% of public sector; 23% of private sector workplaces). Availability is greater in larger workplaces and lowest in wholesale and retail trade industries. Forty percent of workplaces with union members and delegates had paid maternity leave compared with 34% where there are members but no delegates and 10% of workplaces without union members. There was paid maternity leave in 18% of workplaces.

It is now 20 years since the principle of maternity leave was established. It is critical for us to get on with the steps necessary to ensure that all women workers have the right to **real** maternity leave ie the standard set by the international human rights machinery; **paid** leave.

Following the lead set in by the model employer, as the Commonwealth Public Service used to be described, the basic paid entitlement should be for three months.

Schemes for payments in other jurisdictions where such leave has been available for many years should be explored. New Zealand and the USA are the only other economically developed countries without paid maternity leave.

I can't understand why we're so far behind when I read through the lists of those who do provide it.

It is not necessary for me to canvas here the evidence which shows that workplace arrangements in relation to pregnancy and maternity have a significant effect on women's experiences in and benefits from employment. Turnover and replacement costs for employers range from 93% - 200% of salary depending on the job.

Paid leave for three months would help mothers establish breast feeding, the health benefits of which have long been recognized. Breast feeding also has been found to have considerable economic significance.

In the ANU National Centre for Epidemiology & Population Health Study, the Economic Value of Breast Feeding in Australia estimates that achieving national breast feeding targets would result in \$500M economic gain, the equivalent of 0.1% of GDP annually.

This is significantly greater than the economic gain which would result from several key areas of micro economic reform. This matter concerns me not only because progress in achieving paid leave is too slow but worse perhaps, women who have had it, are losing it!

Marian Baird recently drew to my attention an appalling example of this. The "safety net" conditions set out in the new Employment National Award remove paid maternity leave.

Employment National Limited is a wholly owned government business formed as a result of the corporatisation of the former Commonwealth Employment Service. A subsidiary which is called Employment National Administration (ENA) actually employs the workers.

Approximately 65% of the employees are women and the majority of ENA's new employees are women between the ages of 20-30 years. The entitlement was removed outright. There was no compensation, no trade-off, no other leave or payment given to make up for the loss.

Baird in her article asks what signal does this send about the value of women in our society, about the standard of our civilisation in the 1990's.

It suggests that Australia is regressing, that women are to be penalized financially for bearing children. She points out that it happened with little media attention, public scrutiny or outcry. Do we just take it lying down she asks? I remember when GIO did the same thing in the early 90's we ran a political campaign with orange and purple stickers: "Paid maternity leave – not a boss's take away."

It was front page news!

Last month the ILO met for its 87th session in Geneva. The maternity leave convention ILO 103 was on the agenda. It should be noted that the formal Australian delegation was made up of 12 men. I believe that this is inappropriate. The major topics of debate were maternity protection and child labour. Pressure must be placed on the Australian government to ensure gender equality in future delegations.

It is interesting to note that the ILO has recognized the core importance of Maternity Protection since its inception in 1919. ILO 103 was one of the first instruments adopted. It was revised in 1952 and in 1997 it was agreed that many advances in national law and practice and the dramatic increase in women's participation in the workforce warranted a further review.

The review process has two stages. The recent June meeting was the first – a tripartite committee debate of the content of a draft new convention proposed by the ILO Secretariat. Before this debate the ILO produced a law and practice report and a questionnaire for member states.

The Australian Government and the ACTU prepared formal responses as did the National Women's Justice Coalition. The latter was endorsed by a large number of individual women and women's organizations in Australia.

Major issues for Australia are

(i) the compulsory periods of leave in the convention

(ii) method of payment for the leave

There are some others, for example the scope of the Convention. It's the second which is the most often seen as a stumbling block to the Cedaw reservation and 103.

I don't believe that it is appropriate to argue that employers should bear the costs of maternity leave.

Women would be severely disadvantaged if this were the case. Surely we have the wit and ability to develop a scheme for payment on a basis similar to those operation in Europe and Scandinavia and the scores of other countries where paid maternity leave is available.

Its important for all of us who are serious about tackling discrimination and pursuing EEO to be informed about these issues and to be lobbying on them. The National Women's Justice Coalition has done an enormous amount of research and analysis in the area as has Lisa Heap at the Australian Education Union.

Lisa was at the ILO meeting. She is running a campaign in those states where teachers don't have paid leave (SA. Tas. WA). Its important to make our views on the convention known to the Government before the ILO goes in to the second stage of the Review.

Every generation wants things to be better for the next. I want women to be able to combine work and family responsibilities in a way that has meaning – paid maternity leave is a first basic step.

If we are serious about all women having this right we must work towards signing ILO 103. The Federal Parliament can then legislate to include it in the Workplace Relations ACT.

Perhaps to some this sounds like pie-in-the-sky. So did the principle of maternity leave itself to me in the sixties when I was juggling babies breast feeding and work schedules.

I know it can be done.

May I conclude with congratulations to Professors Ed Davis and Valerie Pratt on establishing the Clare Burton scholarships. First and foremost Clare was a scholar, a scholar of the highest order. This is the most appropriate way to honour her extraordinarily rich and valuable contribution to the pursuit of justice for working women.