WARDLEY V. ANSETT:
AN EXAMINATION AND ANALYSIS OF A LEADING AND INFLUENTIAL
EQUAL OPPORTUNITY CASE

SUSANNE DAHN

OCTOBER 1987

This Research Report is submitted in partial fulfillment of the requirements for the Degree of Master of Business Administration at the University of Melbourne.
NOTICE OF DISCLAIMER

This Research Report has been prepared by Susanne Dahn for the purpose of academic assessment in the Final Year of the Degree of Master of Business Administration at the University of Melbourne.

The University accepts no liability for the matters contained in the Report and has no knowledge of the accuracy or otherwise of the matters contained therein. Accordingly any person using this Report does so at his or her own risk.

This Research Report does not contain any material which has been submitted by the author for the award of a degree or diploma in any institution nor, to the best of the author's knowledge, does it contain any material previously published or written by another person, except where due reference is made in the text.
I gratefully acknowledge the assistance provided by Deborah Lawrie, Faye Marles, Ian Siggins, Moira Crogan, Janet Atkinson, Denise McPherson, Mary Owen, Patricia Heggie, the Australian Federation of Airline Pilots and the Australian Women Pilots Association in the conduct of this research. Helpful assistance was also provided by a number of other individuals and organisations.

My thanks are also due to Dr. Peter Dowling of the Graduate School of Management, University of Melbourne, for his guidance and supervision of this research. Further thanks are due to Miss Ros Dawson-Marsh of the Graduate School of Management for her considerable help in the preparation of this report.

I am also sincerely grateful for the valuable suggestions, assistance and encouragement provided by Ms. Tracey O'Brien. I acknowledge the assistance of the Office of the Auditor-General, Victoria. And I acknowledge and thank my parents for their continuing support, understanding and tolerance.
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>ii</td>
</tr>
<tr>
<td>Abstract</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Women Pilots and Ansett Airlines</td>
<td>3</td>
</tr>
<tr>
<td>Ansett Trainee Pilots - Qualifications Required</td>
<td>4</td>
</tr>
<tr>
<td>Ansett's Selection Process</td>
<td>5</td>
</tr>
<tr>
<td>July 1978 Trainee Pilot Intake - The Decision</td>
<td>6</td>
</tr>
<tr>
<td>Complaint lodged with the Equal Opportunity Board</td>
<td>6</td>
</tr>
<tr>
<td>The Conciliation Stage - Commissioner for Equal Opportunity</td>
<td>6</td>
</tr>
<tr>
<td>Ansett request (temporary) exemption from Equal Opportunity Act</td>
<td>7</td>
</tr>
<tr>
<td>Additional trainee intakes and invitation to re-apply</td>
<td>8</td>
</tr>
<tr>
<td>First hearing - Equal Opportunity Board</td>
<td>9</td>
</tr>
<tr>
<td>Supreme Court Writ of Prohibition</td>
<td>11</td>
</tr>
<tr>
<td>New (temporary) Board instituted</td>
<td>12</td>
</tr>
<tr>
<td>Second hearing - Equal Opportunity Board</td>
<td>12</td>
</tr>
<tr>
<td>Board's decision</td>
<td>14</td>
</tr>
<tr>
<td>Appeal to the Supreme Court of Victoria</td>
<td>16</td>
</tr>
<tr>
<td>Transfer to High Court of Australia</td>
<td>18</td>
</tr>
<tr>
<td>Retirement of Sir Reginald Ansett</td>
<td>20</td>
</tr>
<tr>
<td>November Trainee Pilot Intake</td>
<td>21</td>
</tr>
<tr>
<td>New Management at Ansett</td>
<td>23</td>
</tr>
<tr>
<td>High Court Decision</td>
<td>24</td>
</tr>
<tr>
<td>Career at Ansett</td>
<td>25</td>
</tr>
<tr>
<td>Analysis of the Case</td>
<td>26</td>
</tr>
<tr>
<td>Implications of the Case</td>
<td>30</td>
</tr>
<tr>
<td>Conclusion</td>
<td>33</td>
</tr>
<tr>
<td>Appendices</td>
<td>35</td>
</tr>
<tr>
<td>References and Footnotes</td>
<td>42</td>
</tr>
<tr>
<td>Bibliography</td>
<td>49</td>
</tr>
</tbody>
</table>
Abstract

The aim of this paper is to examine Deborah Wardley's lengthy and costly struggle to become a trainee pilot with Ansett Airlines. This struggle began in February 1976 when Deborah (then) Lawrie lodged an application with Ansett. Ansett finally offered her employment some 3 1/2 years later after the company had been found guilty of discriminating against her on the basis of her sex and were ordered to accept her as a trainee. The protracted legal battles continued however and over 4 years elapsed before Mrs. Wardley's trainee position was secured.

The examination constitutes a chronicle of the facts as well as the judicial aspects of the dispute from the attempts at conciliation by the Victorian Commissioner for Equal Opportunity through proceedings at the Equal Opportunity Board, the Supreme Court of Victoria and the High Court of Australia. At the time of the complaint by Miss Lawrie, the Equal Opportunity Act was in its infancy and the Ansett/Wardley case was the first Victorian Equal Opportunity matter to be heard by the judicial system.

The examination also includes a range of ancilliary issues that impacted on the case which, together with the legal precedents set by the case, have had important consequences on community and employer attitudes to equal employment opportunity generally and sex discrimination in particular. These ancilliary issues include the media/public attention given to the case, the involvement of women's groups, the particular attitudes and tactics adopted by Sir Reginald Ansett and his company and the personal characteristics of Mrs. Wardley herself.

The examination concludes with an analysis of the case, and the key factors that made it unique and of historical importance. Moreover, the peculiar characteristics of the case raise important issues about the effectiveness of equal opportunity legislation in eliminating sex discrimination in employment.
Introduction

The United States was the first country to pass comprehensive equal employment opportunity legislation. Initially this was embodied in Title VII of the Civil Rights Act 1964 and later extended by the passing of the Equal Employment Opportunity Act 1972. The UK followed with its Sex Discrimination Act 1975.

Australia began the process of legislating against discrimination when the Australian Government ratified the International Labour Organisation's Convention No. 111 in 1973 which committed the nation to the pursuit of equality in employment. In Victoria, a Committee for the Status of Women was established by the Premier in 1975, the U.N.'s International Women's Year. This Committee recommended the introduction of legislation prohibiting discrimination on the grounds of sex or marital status.

The Equal Opportunity Act 1977 was passed by the Victorian Parliament in May 1977 and became fully operational in April 1978. It legislated against direct and indirect discrimination on the grounds of sex and marital status in the areas of employment, education, provision of goods or services and accommodation. The Victorian Act followed two other State Acts - the South Australian Sex Discrimination Act operative from August 1976 and the New South Wales Anti-Discrimination Act operative from June 1977. The Victorian Act established the Office of the Commissioner for Equal Opportunity to perform an educational and conciliatory function and the Equal Opportunity Board to hear and arbitrate on matters unable to be settled through conciliation.

For the purposes of this examination of the Ansett/Wardley dispute the relevant parts of the legislation are:

Section 16(1)  "A person discriminates against another person on the grounds of sex or marital status in any circumstances relevant for the purposes of a provision of this Act if on the ground of the sex or marital status of the other person the first-mentioned person treats the other person less favourably than he treats or would
treat a person of the other sex or of a different marital status".

Section 18(1)  "It is unlawful for an employer to discriminate against a person on the grounds of sex or marital status .... (c) by refusing or deliberately omitting to offer employment".

Women Pilots and Ansett Airlines

Women pilots have had a long and often glamorous history. Amelia Earhart started flying in 1917, set numerous altitude and solo records and was awarded the Distinguished Flying Cross. She also founded the Ninety-Nines, an international organisation promoting the role of women in aviation. Amy Johnson began flying in 1928 and later successfully flew solo from England to Australia. Australia's first paid woman pilot was Nancy Bird Walton who, in 1935, flew the Aerial Ambulance in far-western New South Wales.

There are women flying doctors, women farmers who fly planes, women crop-duster pilots, women charter pilots and women flying instructors as well as many women who fly for recreational purposes. Only a small minority of women pilots are engaged in commercial freight or passenger flying. The Australian Women Pilots Association had some 500 members in 1979 the vast majority of whom were engaged in flying as a sport or hobby.³

The Australian Federation of Airline Pilots currently has 25 women as members and estimates that 10 of these are employed in Australia as commercial pilots with 4 employed by the two major domestic airlines.⁴ A further 5 are employed by Qantas and 4 women have recently become the first to begin pilot training in the RAAF.⁵

In the mid to late 1970's the situation was however quite different. While there were women employed by commercial airlines in the United States, United Kingdom, U.S.S.R., Scandinavia, China, Belgium and Canada⁶ there were no women employed as commercial pilots by the major Australian airlines - Qantas, Trans Australian Airlines or Ansett...
Airlines. One woman, Lorraine Cooper, had applied to join Ansett as a trainee pilot in 1974. She was interviewed on 1975 and put on a waiting list. In 1977 Ansett took her off the waiting list because she had exceeded the maximum entrance age for pilots. Prior to that Beryl Young had applied to both TAA and Ansett but had not even reached interview despite her extensive flying experience. She is now personal pilot to Sir Joh Bjelke-Petersen.

Deborah Lawrie had been enquiring about a position as a trainee pilot with Ansett for about a year when she applied in February 1976. She was then 23 years of age and Ansett's stated maximum age for commencement as a trainee pilot was 28. Ansett did not at this stage have a formal or stated policy on the recruitment of women as trainee pilots. An Ansett official was reported to have commented that one or two women a year applied to be pilots but they did not have the necessary qualifications. (Deborah also applied to TAA but was never granted an interview. TAA's pilot intake was much smaller than Ansett's).

**Ansett Trainee Pilots - Qualifications Required**

Ansett's minimum required qualifications to be considered for a trainee pilot's position were:

- leaving certificate
- commercial pilot's licence
- morse code rating
- in excess of 500 hours total flying time
- theory subjects necessary for a senior commercial pilot's licence.

At the time of her application to Ansett, Miss Lawrie was a full-time teacher at Chandler High School and a part-time flying instructor at Moorabbin Airport. She had been flying solo since she was sixteen and had clocked up 1688 hours flying time. She held a Bachelor of Science degree from the University of Melbourne and a Diploma of Education from Rusden State College. She held a commercial pilots licence, morse code rating and had passed the theory subjects necessary to hold a senior commercial licence. In addition she held a class one instrument rating and a B grade instructor rating.
Ansett's Selection Process

On 24 October 1977 Miss Lawrie was interviewed by one of Ansett's senior pilots and subsequently advised that this 'first interview' had been successful.

Ansett's recruitment practice for pilots was to schedule 'second interviews' as demand for services increased and/or pilot strength was depleted in accordance with a formula agreed with the Australian Federation of Airline Pilots. Double the number of trainees actually required were generally called on for 'second interview'.

Miss Lawrie attended for a 'second interview' in June 1978 before a panel of senior pilots representing Ansett Airlines and associated regional airlines. She was one of 29 candidates out of which 14 were to be selected for the July 1978 trainee intake.

The selection panel followed its standard interviewing procedure asking questions about flying experience etc., but in addition various matters which related to the gender of Miss Lawrie were discussed including special arrangements for uniforms and facilities, how the candidate believed the public and crew would react to a woman pilot and the company's requirement that she must take leave without pay while continuing to contribute to the superannuation fund in the event of pregnancy. Miss Lawrie indicated that she would comply with this requirement. She also indicated that she was engaged to be married, intended to have children but also intended to maintain her profession whether she in fact had children or not.

Each member of the selection panel provided comments and an aggregate score out of 100 on each candidate. The aggregate score consisted of sub-scores in the categories of age, educational qualifications, flying qualifications, motivation and potential.

Miss Lawrie scored high marks from all but one of the panel members who expressed reservations about the "lack of decision re future childbirth and/or number of children". Her average score was higher than that of seven of the 14 candidates finally chosen to become trainees.
Ansett's selection process then required candidates, who were considered to have potential, to undergo psychological appraisal and recommendation by external consultants (Chandler Macleod). The psychological tests covered six areas - verbal intelligence, numerical intelligence, abstract intelligence, speed and accuracy, mechanical comprehension and spatial relations.

Miss Lawrie was referred to the external consultants and underwent the psychological appraisal. She achieved good results in all of the tests and was recommended with favourable comments.

July 1978 Trainee Pilot Intake - The Decision

The selection panel was then reconvened to consider all of the candidates (including their psychological test results and recommendations) and decide which 14 of the 29 would be included in the July 1978 intake. Unsuccessful candidates were either rejected outright or deferred for later consideration - put on the waiting list.

Miss Lawrie was notified by letter dated 20 July 1978 that her 'second interview' was unsuccessful. There was no indication that she would be reconsidered for a subsequent trainee pilot intake - she had been rejected outright.

Complaint lodged with Equal Opportunity Board

On 2 August 1978 Miss Lawrie lodged a written complaint with the Registrar of the Equal Opportunity Board. She alleged that Ansett had discriminated against her on the grounds of her sex in refusing to offer her employment - specifically, that the company had breached Section 18(1) of the Equal Opportunity Act 1977(Vic). She based her allegations on her qualifications and test results relative to other candidates.

The Conciliation Stage - Commissioner for Equal Opportunity

Upon receipt of the complaint it was referred for conciliation to the Commissioner for Equal Opportunity, then Faye Marles.
Ansett denied the allegation of discrimination and insisted that Miss Lawrie had not been selected for the July 1978 intake on the basis of relative merit only. Sir Reginald Ansett became involved in the conciliation process but he tended to trivialise the matter - for example, he raised doubts about the number of flying hours Miss Lawrie had accumulated. He held, and continued to hold, a strong personal view that women were not suited to be airline pilots.

It became apparent that Ansett would rely on safety grounds to justify their new position not to employ women as pilots as a matter of policy. The company claimed that women did not possess the strength to operate the controls of their jet planes and that this would be particularly dangerous in emergency situations.

As conciliation was not fruitful the Commissioner, in November 1978, referred the matter back to the Board for hearing and suggested that Ansett should apply for exemption from the provisions of the Act, that is, permission to employ only male pilots on the basis of their strength/safety claims.

**Ansett request (temporary) exemption from Equal Opportunity Act**

Ansett did in fact apply for a three-year exemption from the Act. Ansett's General Manager, Mr. Frank Pascoe, told the press "... safety is the reason for our application. We think we run a safer airline this way. We are not seeking to ban women pilots but to gain an exemption so we can have a closer look at the matter".

During the conciliation stage Ms. Marles had collected data from 10 overseas airlines, predominantly U.S. airlines, each of whom employed women pilots although their numbers were minute. In 1977 only 22 of the 40,000 pilots in the U.S. were women. According to Miss Lawrie this number increased to 48 in 1978. Ian Siggens, the Acting Commissioner for Equal Opportunity, explained the low representation of women pilots as being caused by three factors - slow growth of the airline industry, a commitment to recruit male pilots retrenched during previous industry downturns and limited supply as the U.S. military had not yet accepted women for pilot training. (History was later made when, on 29 August...
1987, a Continental Airlines flight from Hawaii to Sydney contained the first all-female crew to fly a wide-bodied jet.\textsuperscript{18}

All of the airlines surveyed by Ms. Marles indicated that flight safety was not jeopardised by the use of women pilots and that, with one exception, no restrictions of equipment or duty were imposed on women pilots.\textsuperscript{19}

Lyndsay Connors, in her article on the 49th Convention of the Ninety-Nines (the international women pilot's organisation), reported Dr. June Mill's finding that women's air safety record is superior to that of men.\textsuperscript{20}

The exemption request was considered by the Board on 19 December 1978. The Australian Federation of Airline Pilots stated before the Board that it considered women to be eligible for membership and Ansett was unable to produce evidence that established a strength requirement for pilots. The Board's Chairperson, Ms. Deidre Fitzgerald ruled that there was no prima facie case for granting the exemption.

Following this decision the press printed their first details of public opinion about the case. The majority of people polled by the Herald in Ansett and TAA terminals said they would be happy to fly with a woman pilot.\textsuperscript{21} The Age reported that 50 people had telephoned them and were unanimous in their support for the right of women to become jet pilots.\textsuperscript{22}

Additional trainee intakes and invitation to re-apply

The Board hearing had been set down to commence on 31 January 1979. Since the July 1978 intake of 14 pilots there had been two additional intakes of 12 in September 1978 and 16 in December 1978. A further 12 trainees were also due to commence in March 1979.

On 12 January 1979 Ansett's solicitors wrote to Miss Lawrie on behalf of Ansett inviting her to re-apply for a proposed May intake. The letter said in part that re-application would be dealt with in accordance with the provisions of the Equal Opportunity Act 1977.\textsuperscript{23} She was reported in
the press as saying that although she had been asked to re-apply and would do so she would still go ahead with her complaint.24

First hearing - Equal Opportunity Board25

The (public) hearing of the matter before Deidre Fitzgerald (Chairperson), Joan Wolfinden and Don Ross commenced on 31 January 1979 and both Miss Lawrie and Ansett were represented by counsel.

Miss Lawrie presented evidence of her qualifications (she had now amassed in excess of 2000 flying hours and held her senior commercial pilot's licence).26 She also stated the fact that she had scored higher in each of the selection criteria and pre-employment tests than at least one successful male candidate except for age which was the same for Miss Lawrie and the successful candidate.

Counsel for Ansett raised the issue of flying hours stating that the average flying hours of successful candidates was 2223 hours compared with Miss Lawrie's then total of 1688 hours.27 Ansett then submitted that a prima facie case had not been made out and that there was, as such, no case to answer.

After examining, in camera, Ansett's files on each of the candidates for the intake, Deidre Fitzgerald announced the Board's finding that: "The respondent (Ansett) had unlawfully discriminated against the complainant (Lawrie) in failing to employ her in the July 1978 intake" and ordered that "the respondent refrain from committing any further discrimination against the complainant ... and further orders that she be the first person admitted in the next intake".28

Ansett objected asking the Board to recall the order on the grounds that a "procedural ineptitude"29 had occurred. The Board had made a finding on the merits of the case and made two orders of substance without giving Ansett a proper opportunity to present evidence. This was at odds with the Act which allows the respondent to present evidence only after a prima facie case to answer has been established. Some ten minutes later, following discussion between the Chairperson and Counsel, the
Board did recall the order and found that a prima facie case had been established against Ansett.

The following day counsel for Ansett applied to the Board to disqualify itself from proceeding further in the matter on the grounds that "fair minded" people might reasonably suspect that the Board had prejudged the matter in favour of the complainant. The Board adjourned until 9 February 1979 to consider the matter.

Senator Susan Ryan, the then Opposition Spokesperson on Women's Affairs, commented that Ansett's refusal to employ women pilots was strengthened by their knowledge that the same discrimination existed in Australia's defence forces.

When the Board resumed on 9 February 1979, and rejected Ansett's application that it disqualify itself, counsel for Ansett told the Board that it would seek a writ of prohibition from the Supreme Court asking the Board to show reasons why it should not disqualify itself and asked that proceedings be adjourned until the Supreme Court could consider this application. Counsel for Miss Lawrie accused Ansett of embarking on a "war of attrition" saying that Ansett was armed with "all the sinews of war" while Miss Lawrie had only limited means and would be placed under great personal and financial stress by prolonged proceedings.

The hearing continued and the Board heard evidence from Captain Alan James, Chairperson of the selection panel that had considered Miss Lawrie. He said that the factors which had influenced selection included flying experience, physical appearance and compatibility with airline operations. He said "we don't want someone who is unattractive. They must wear a uniform well". Also giving evidence was Captain Vuillermin of TAA who echoed Flight Instructor Garth Harris' earlier evidence on the superiority of Miss Lawrie's flying skills.

A group of women protestors had gathered outside the Board's building holding placards reading "Who'd chance it with Mansett" and "Sex before skill - that's Ansett". Charlotte Wall, a pilot with Southern Airlines in the United States, offered to come to Melbourne to give evidence before the Board. Captain Rod Gilstrap of United Airlines, which
together with Continental Airlines employed the largest proportion of women pilots, commented that women pilots had been tested for strength requirements and found to be capable of handling jet controls even without hydraulic boosts.\textsuperscript{38}

**Supreme Court Writ of Prohibition**

On 9 February 1979, Ansett won a Supreme Court order stopping the hearing and requiring the Board to show why it should not disqualify itself from proceeding with the hearing. The next day, Saturday, 10 February 1979, Miss Lawrie competed (and came a close second) in the sixth annual Freda Thompson Aerial Derby, a solo event organized by the Australian Women Pilot's Association.\textsuperscript{39} Later she married Peter Wardley, an air traffic controller at Moorabbin Airport. The couple delayed their honeymoon so that Mrs. Wardley could appear before the Supreme Court on the subsequent Tuesday.\textsuperscript{40}

On 13 February 1979, the day of the Supreme Court hearing, Sherbrooke Councillor Carolyn Kingham announced the start of a trust fund to help meet Mrs. Wardley's legal costs.\textsuperscript{41} It was also intended to assist other women fighting discrimination cases. Contributions were invited from the public and $1200 was raised in 2 days from 150 donors.\textsuperscript{42} Wardley's legal costs to February 1979 amounted to roughly $3,000.\textsuperscript{43}

At the Supreme Court Peter Liddell Q.C., acting for Ansett, submitted that the Board had breached the rules of justice and requested a fair and proper hearing before a different Board. Mr. Justice Beach continued his injunction of the Board hearing pending his decision. This was brought down on 20 February 1979 and found that the Board, in stating its final determination of the complaint and making two orders of substance against Ansett at a premature stage in the hearing, had breached the requirement that a tribunal act impartially and without prejudice. Justice Beach ordered that the Board be prohibited from hearing the matter further, that a new Board would need to be constituted to hear the matter afresh and that evidence already submitted could not be taken into consideration. The Supreme Court's costs were to be paid by the Board. Justice Beach did not comment on the contentious issue of whether the Board had the power to order Ansett to employ Mrs. Wardley.\textsuperscript{44}
New (temporary) Board constituted

Mrs. Wardley had submitted her re-application for a position with Ansett as requested on 8 February 1979. She welcomed Ansett's assurance that it would comply with the provisions of the Equal Opportunity Act and indicated that she would continue to pursue a position with Ansett regardless of the result of the Equal Opportunity Board proceedings.\

On 22 March 1979, the Victorian Premier announced three temporary appointments to the Board to rehear the Wardley complaint - Dr. Ian Sharp (Chairman), Ms. Shirley Horne and Ms. Rosemary Balmford. On 23 March 1979, Mrs. Wardley received a letter from Ansett advising that an interview was scheduled for her on 6 April. On 30 March 1979 however she received a telegram saying that her interview had been deferred to a date to be advised.

Second hearing - Equal Opportunity Board

The second hearing began on 6 April 1979. It lasted for twelve days and both Wardley and Ansett were represented by counsel. Extensive evidence was submitted including evidence of the close questioning that took place regarding Miss Lawrie's plans for marriage and children, the absence of any strength criteria or tests, special arrangements that would be required for a uniform and facilities and the selection panel's warning of criticism and high expectations. One member of the panel was concerned that Miss Lawrie's earrings would be dangerous in an escape situation.

A letter sent by Mr. Frank Pascoe, Ansett's General Manager, to the Women's Electoral Lobby in Perth was presented as evidence. The letter was dated 20 February 1979 (more than six weeks after Ms. Lawrie was invited to re-apply for a position with Ansett) and stated:

"We have a good record of employing females in a wide range of positions within our organisation but have adopted a policy of only employing men as pilots. This does not mean that women cannot be good pilots, but we are concerned with the provision of the safest and most efficient air service possible. In this
regard we feel that an all male crew is safer than one in which the sexes are mixed ... every other major airline operator in Australia (has) adopted a similar policy in the past. We thank you for your interest in Mrs. Wardley's case and I am sure you will be pleased to know that I have met Mrs. Wardley and find her a very nice person, highly intelligent and undoubtedly a good pilot, but that is not quite what we are talking about".

The overriding reason put forward by Ansett, at this the second hearing, for Miss Lawrie's non-selection was that she was expected to be absent for substantial periods during the formative years of her employment due to pregnancy and childbirth which would also subject her to personal stress while flying. Had she not contemplated having children, she would have been taken on.47 Reliance was now no longer placed on the strength and safety grounds but on the economic grounds that it would be more expensive to employ women pilots.

Evidence was presented of the selection panels scores of candidates - Miss Lawrie had been in the top seven of the 29 candidates on these scores.48 In addition, the panel's positive recommendations of Miss Lawrie and the Chandler Macleod reports were examined. It was discovered that the selection panel were required to refer their decision about Miss Lawrie to 'head office' for approval by Ansett's General Operations Manager.49

Captain Alan Lane, General Operations Manager, admitted in evidence that the company had discriminated against Miss Lawrie but that she could expect a further invitation to apply for a position in the future.50 Ansett's final statement to the Board reiterated that Miss Lawrie was not selected due to expected substantial discontinuity of service resulting from pregnancy; she was not, Ansett said, rejected because of her sex but because of circumstances peculiar to her sex.51 Mrs. Wardley had addressed the issue of pregnancy as well as provided evidence from a Melbourne gynaecologist who tested her for pre-menstrual symptoms and found that her efficiency levels did not drop.52 Mrs. Wardley's final statement reminded the Board that at least one successful candidate had scored worse (or equal in respect of age) than her in every category and had been accepted.53
Mrs. Wardley's solicitor was providing her services free of charge but the case was still costing $500 per day. Wardley had incurred legal costs of $4500, $2000 of which was met by the Carolyn Kingham 'fighting fund'. A public meeting was held in support of Mrs. Wardley at the Melbourne YWCA on 22 May 1979. The meeting also resolved to raise further funds to help women fight discrimination in the courts and to lobby the State and Federal Governments for funding.

Board's decision

The Board announced its decision on 6 June 1979. In all major respects it found for Mrs. Wardley - for the purposes of the Act discrimination had been established in that a less satisfactory male candidate had been treated more favourably than she which raised the presumption of discrimination and this presumption had not been rebutted by the evidence or a subsequent offer of employment. Implicit in this decision is that the child-bearing potential of women could not be used as an excuse to limit women's role in society - anatomy should not be destiny.

On 19 June 1979 the Board made four orders in relation to Mrs. Wardley:

1. That the respondent refrain from committing any further act of discrimination against the complainant.

2. That the respondent engage the complainant as a trainee pilot not later than its next intake of pilots.

3. That within 14 days of the date of the order the respondent pay to the complainant by way of damages $14,500.

4. That from the date of this order until the complainant first receives a salary from the respondent following her engagement as a trainee pilot or until the rejection of an offer of such engagement the respondent pay to the complainant within 14 days of the liability to do so arising, the sum of $40 per day.
Due to industrial relations complexities the Board was unable to order that Mrs. Wardley be awarded the seniority she would have attained had she been employed in the July 1978 intake. In assessing the amount of damages, the Board took account of the reduction in the length of Mrs. Wardley's career, the variability of career patterns (including a high proportion of 'early' retirements) and the costs incurred by Mrs. Wardley to maintain her flying qualifications above those required for a flying instructor. The orders were formulated after 'draft' orders were invited, received and discussed with both parties.

The Board was not empowered to award costs so Mrs. Wardley had to pay the more than $10,000 legal costs incurred by her - she did not qualify for legal aid. A recommendation was submitted to the Premier that this situation be remedied and Pauline Toner, Shadow Minister for Women's Affairs raised the matter in Parliament. ($3,000 had now been raised by way of public appeal - $2000 had already been given to Mrs. Wardley which she now planned to return).

Lawyers hailed the ruling as a major precedent and expected it to "kick along the trend against discrimination in employment". Although cost was expected to work against a flood of complaints to Equal Opportunity tribunals, Cr. Carolyn Kingham told the press that she knew of at least 30 women who had been waiting on the Wardley decision before deciding whether to go ahead with their own complaints of sex discrimination. Media reports and editorials echoed Mrs. Wardley's guarded triumph at the decision - guarded because Ansett had 30 days in which to appeal the decision. Sir Reginald Ansett's much publicised insult of his cabin hostesses as "a bunch of old boilers" was recalled. Sir Reginald told Channel 7 News that "we haven't finished yet. We haven't even started yet". Peter Wardley said, "Ansett pilots have been ringing up during the day to congratulate Debbie on her victory". Melbourne travel agent, Graeme Orr, stated publicly that he would actively discriminate against Ansett if they appealed the Board's decision. He said that he currently gave TAA half of his business but would then place all his business with TAA. He called on other travel agents to follow suit so that they could "force Sir Reginald Ansett's head out of the sand." The issue of the freedom of employers to employ whom they choose was also raised in the increasingly public debate.
Calls were made for equal opportunity legislation to be enacted in all States.69

Appeal to the Supreme Court in Victoria

Ansett did institute appeal proceedings in the Supreme Court in Victoria on two grounds. Firstly, Ansett requested a stay of orders and sought to exercise its right of a rehearing, in which Mrs. Wardley would need to re-prove her case and Ansett could introduce new evidence. Secondly, Ansett challenged the constitutional validity of the Equal Opportunity Act in that it sought to regulate matters relating to employment also regulated under Federal law - the Federal Industrial Award (Federal Airline Pilots Agreement) administered by the Flight Crew Officers Industrial Tribunal.70

Upon news of the appeal the Women's Electoral Lobby National Communications Office called on the travelling public to protest about Ansett's attitude.71 The Victorian National Council of Women which covers about 145 affiliated women's groups declared 31 July (the anniversary of the day Deborah would have started her training with Ansett) D-Day and called on women's groups in all states to boycott the airline and bus service in support of Mrs. Wardley. Response from women's groups were quick and the ALP was to consider boycotting Ansett as a formal policy although most ALP members already flew TAA.72 Mrs. Wardley's barrister, Mr. John Dwyer was overseas at this time but Mr. Ted Lawrie QC agreed to provide his service free of charge.73

On 28 June 1979 Mr Justice Southwell refused the request for the stay of orders and ruled that the orders of the second Board would stand until upheld or reversed - meaning that Ansett would have to employ Mrs. Wardley in their next trainee intake.74 Wardley said of the next intake "I'd say that if they had one planned they would have put it off for now".75 Justice Southwell also directed that the case be given priority in listing.76

Planning for D-Day continued including plans for a rally and march and a public meeting to raise further funds. The Australian Federation of Business and Professional Women announced that they would change their
official carrier to TAA. The Federation called again on womens groups to boycott Ansett, called specifically on secretaries to avoid booking with Ansett and on government departments to boycott Ansett also.\(^{77}\)

A Victorian liberal backbencher, Ms. Joanne Chambers defended Ansett's Right to choose which employees it wanted to employ.\(^ {78}\) Dame Phyllis Frost criticised the National Council of Women's move on the boycott as denying Ansett its proper right of appeal through the courts.\(^ {79}\)

Funds raised now totalled $3500. Four representatives of women's groups met with Ansett's General Manager Frank Pascoe and an Ansett legal adviser on D-Day.\(^ {80}\) Originally the meeting was to have been with Sir Reginald Ansett but, in the words of Mary Owen a WEL organiser at the meeting, "he chickened out".\(^ {81}\)

Industry sources believed the boycott was effective and of concern to senior Ansett executives. Department of Transport figures showed that Ansett achieved only 3.4 per cent passenger growth in the June quarter while TAA achieved 16.8 per cent. Ansett countered these figures by claiming that TAA passenger/kilometre revenue was not as good as theirs. Ansett refused to say when the next pilot intake would be. Ironically, the turndown in passenger traffic did not warrant a current pilot trainee intake.\(^ {82}\)

The Wardley v. Ansett case was now getting publicity in America and England and at home donations to the fighting fund continued to come in at the rate of $100 per week. Deborah was also encouraged by the letters which accompanied the donations - "I've received about 500 letters and only three have been adverse". She insisted she would exhaust all possibilities to become a pilot in Australia before she would go overseas but said, "I'll leave the country to do what I want to do ... fly the big jets".\(^ {83}\)

The boycott was gathering momentum and while Ansett was publicaly refuting allegations of damaging effects by pointing to TAA's 1000 greater hours flown in the June quarter, privately it was known that the airline was alarmed at the downward trend in passenger numbers.\(^ {84}\)
The organisations now boycotting Ansett included a wide range of women's groups, unions and the Victorian branch of the ALP as well as various State bodies, companies, travel agents, secretaries and thousands of individuals many of whom who had complained directly to Ansett about its attitude.85

It had not been a good year for Sir Reginald Ansett - neither for his company nor personally. There had been the $18 million collapse of Associated Securities, the loss to his son Bob in the Budget v. Ansett/ Avis airport monopoly rent-a-car battle and the takeover bid by Robert Holmes a'Court's Bell Group Ltd. Ironically Ansett turned to TNT for help against the Bell takeover bid. TNT had tried to take over Ansett in 1972 but were stopped by hurried legislation enacted by then Premier, Sir Henry Bolte (later to be a Director of Ansett). That share battle had led droves of passengers away from Ansett and to TAA. In addition Ansett had suffered significant drops in cargo tonnes carried (Ansett's traditional business strength) and achieved a much lower passenger growth rate than TAA which would have been smaller still but for TAA's costly pilot strike.86

The Wardley issue was believed to have sharply divided the Ansett Board with the strong attitude of Sir Reginald himself being the major factor driving the continuation of the dispute.87

Labour MLA Pauline Toner urged a widening of the boycott against Ansett highlighting not only the inequity of employment opportunity issue but the patent inequality between the strength and power of the parties in the dispute and expressed her surprise that the State Government had not helped Mrs. Wardley.88 The State Conference of the Women's Electoral Lobby echoed this sentiment when it called on the State Government to provide funds for individuals wishing to fight discrimination under the Equal Opportunity Act particularly against large companies which have access to unlimited funds.89

Transfer to High Court of Australia

Ansett's application to the Supreme Court for a declaration that there was an inconsistency between Federal and State law (that the Equal
Opportunity Act did not apply to Mrs. Wardley's employment because it was inconsistent with the (Federal) Airline Pilot's Agreement) was still outstanding. On 2 October 1979 the State Attorney-General applied, pursuant to Section 40 of the Judiciary Act, to have the matter transferred to the High Court because it now involved a constitutional issue which could only be determined by the High Court.90

The Equal Opportunity Board's order that Mrs. Wardley be employed in the next trainee pilot intake also stood. On 10 October 1987 the Supreme Court's Mr. Justice Gray turned down another Ansett request that that order be suspended pending the outcome of the High Court appeal. The next trainee pilot intake was due on 5 November 1979 and the company claimed that they would have to engage and train a person whom they did not wish to employ.91 Mr. Justice Gray recognised the importance of seniority in the employment of pilots and denied the request to avoid further hardship to Mrs. Wardley.92 At the hearing Ansett indicated in an affidavit that, if forced to accept Mrs. Wardley in the November intake, it would dismiss her the next day, an action within their rights as provided by the Airline Pilots Agreement. To justify their dismissal they would investigate a safety incident involving Mrs. Wardley that had occurred in November 1978. This, said Mrs. Wardley's solicitor, would result in another legal battle over the conflict between State and Federal law.93

Deborah was pleased at the victory but aware that Reg Ansett still intended to fire her. She was not discouraged "I hate not completing anything. I like winning". She had wanted to be a pilot for too long, had now clocked up 2600 flying hours and was seven hours away from her Fokker Friendship Certificate (the bottom rung of the Ansett ladder). She acknowledged the help of her husband, "If the truth be known, he forced me into it", and her solicitor friend who is providing her services free of charge as well as her many supporters.94

On 17 October 1979 Ansett formally offered Mrs. Wardley a position in the next intake of trainees to take place on 5 November 1979.95 Mrs. Wardley accepted and was again pleased but said she could not feel secure until after the High Court decision. Ansett would not comment on
whether she would be sacked immediately.\textsuperscript{96} The High Court hearing was set down for 29 October 1979.\textsuperscript{97}

On 22 October 1979 the Australian Federation of Air Pilots finally took a position on the Wardley/Ansett issue. The Federation had been passively participating in the saga since the conciliation stage. Ansett had tried to get the AFAP involved as an ally but the AFAP refused. They had also refused to support Mrs. Wardley. In July 1979 Deborah wrote to the AFAP and formally requested a policy statement. On 22 October a statement was issued to members that explained the silence to date, supported the right of women to be airline pilots and indicated that if Mrs. Wardley were dismissed for "trumped-up, ill conceived or dishonest reasons" it would constitute intimidation of a member and as such would be unacceptable to the Federation and that industrial action would be considered.\textsuperscript{98} (The full text of the statement is reproduced as Appendix 1).

The High Court hearing commenced on 29 October 1979\textsuperscript{99} before the full Court – the Chief Justice, Sir Garfield Barwick and five other judges, Justices Stephen, Mason, Murphy, Aickin and Wilson. In seeking to retain their right to terminate trainee pilots for any reason within six months of commencement as provided by the Airline Pilots Agreement, Ansett essentially challenged the entire validity of state anti-discrimination legislation. The states of New South Wales, Victoria, South Australia and Tasmania, not unexpectedly, intervened in support of Mrs. Wardley. Wardley's counsel argued that there was essentially no conflict between the Federal industrial agreement and the State Act as the former concerned itself with the procedure of dismissal while the latter concerned itself with the reasons for dismissal.\textsuperscript{100}

Retirement of Sir Reginald Ansett

On 31 October 1979 Sir Reginald Ansett stood down from his position as Ansett Transport Industries Chief Executive - age (he was then 70 years old), illness, and Bell's increasing shareholding had taken their toll. He retained however his position as Chairman of the Board. His views on women as pilots were still firm. When Robert Holmes a'Court told him that he had recently flown on a Soviet Aeroflot flight which had women
pilots, navigators and crews he replied "They were not women, they were Russians".101

Across the Tasman, Air New Zealand accepted its first two women trainee pilots to commence in January 1980. The two women were reported to have been aided considerably by New Zealand's stringent equal opportunity legislation.102

Holmes a'Court, the anticipated incoming Ansett Chief Executive, (after a six month battle Ansett had reached a $50 million agreement with Bell Resources for Bell to eventually acquire a majority shareholding in Ansett) was known to have no objections to women pilots but it was unclear as to what he would do about Mrs. Wardley. It was unlikely that after gaining Sir Reginald's confidence that he would deliberately antagonize Ansett whose strong view on the Wardley matter was well known - that it was a gross infringement of the right to employ whom he wished.103

November Trainee Pilot Intake

On 5 November 1979, fifteen months after lodging her complaint with the Commissioner for Equal Opportunity and with accrued legal costs of $11,000, Mrs. Wardley commenced training with Ansett along with 15 male trainee pilots. She is reported to have said that she expected to have to perform better than the others to justify her position but that she looked forward to the 'real' competition.104

A somewhat more co-operative approach by Ansett officials was witnessed by the press when the officials brought Mrs. Wardley to the front entrance of the Ansett centre at Tullamarine for interviews at the start of her first day.105

At least one organisation, the Australian Federation of Business and Professional Women, lifted its boycott of Ansett now that Mrs. Wardley had been employed by Ansett. The Federation instructed its members to lift the ban until the High Court's decision had been brought down.106
On 9 November 1979 Mrs. Wardley received a letter from Ansett advising her that the company wished to investigate 'an incident' involving an aircraft under her command and another aircraft which took place at Moorabin Airport on 28 November 1978.107

The incident took place while Miss Lawrie was instructing a trainee pilot. The other plane, a Cessna, flew too close to the plane in which Miss Lawrie was instructing her student. The Australian Federation of Air Pilots, representing Mrs. Wardley (now an employed member) in this matter, said, in a press statement, that the incident was a "minor everyday occurrence that flight instructors are trained to handle and do so in their stride". (The full text of the statement is reproduced as Appendix II).108

Mrs. Wardley had already been fully exonerated by the Department of Transport so the AFAP, suspicious of the bona fides of Ansett, suggested that they represent Mrs. Wardley. Ansett then refused to continue the matter with the AFAP representatives.109

The AFAP said that Mrs. Wardley was being "vindictively assailed" by Ansett and that they would not tolerate Ansett's "inhuman and unforgiveable" harassment "throughout the most important course of her life". At a time when she should be giving her undivided attention to her training she was being "constantly distracted by letter and interview". The Federation called the matter "the most blatant and calculated attack we have seen in the history of the Federation".110

There were further minor hitches in Mrs. Wardley's training - her uniform was extensively delayed and her 'line' training as a co-pilot was inexplicably cancelled and delayed until after all but two of her intake had already completed theirs.111 Ansett still did not know if they could lawfully dismiss her without reason (they could under the Airline Pilot Agreement but not the Equal Opportunity Act) and their attempts to find reasons had caused an industrial, not to mention community, backlash.
New Management at Ansett

Last minute corporate changes resulted in Ansett's new chief executive being Mr. Rupert Murdoch, not Mr. Holmes a'Court. Murdoch together with Sir Peter Abeles of TNT, became Ansett's joint managing directors in late 1979. Sir Reginald Ansett was still however Chairman of the Board and the widespread rumour was that he still categorically insisted that no woman would ever fly one of his planes.

In reviewing the events of 1979 the Melbourne 'Age' praised Deborah Wardley "for her sheer persistence and courage in the face of discrimination, victimisation, intractibility and repeat hearings".

On 2 January 1980 Mr. Murdoch issued an unprecedented directive to the company's top administrators to treat Mrs. Wardley on her merits and ordered that her progress was to be determined by competence and aptitude only. Murdoch issued the directive to "clear up any misunderstandings that may have existed". Deborah, still in pre-flight training, did not comment at the time but the AFAP welcomed the directive.

This would seem to have removed the possible threat of an adverse decision being handed down by the High Court; to indicate that Ansett management no longer intended to sack Mrs. Wardley on principle even if they legally could. The editorial in 'The Age' on 7 January 1980 commented that "Mr. Murdoch is a shrewd businessman and he no doubt saw the harm, in the form of passenger protests and systematic boycotts by women's organisations, that would follow from continued opposition to Mrs. Wardley. Sir Reginald was prepared to pay this price for what he saw as a principle. Mr. Murdoch, to his credit, is not". It also described Sir Reginald as putting "every legal and practical obstacle in the way of Mrs. Wardley". On this day Deborah made her first training flight in an Ansett Fokker Friendship from Launceston while in Melbourne, Sir Reginald Ansett resigned as Chairman of the Board of Ansett Transport Industries.

Despite the directive, further administrative hitches occurred for Deborah whose 'line' training continued to be delayed because her
endorsement papers did not arrive from the Department of Transport. Mrs. Wardley told the press that she was satisfied with the airline's explanation for the delay. Finally, on 16 January 1980, Deborah Wardley made Australian aviation history when she became the first woman to co-pilot a flight for a major domestic airline, Ansett Flight 232 from Alice Springs to Darwin. Passengers on that flight asked for Deborah's autograph on their airline tickets.

High Court Decision

The day before the High Court was expected to announce its decision on the appeal by Ansett, Ansett's general manager, Mr. Frank Pascoe, unequivocally stated that Mrs. Wardley would stay with Ansett regardless of the High Court decision. Deborah Wardley had finally won her right to be employed as a pilot with Ansett.

On 4 March 1980, the High Court brought down its decision - it dismissed the appeal with costs against Ansett. The case was decided four to two in favour of Mrs. Wardley and in support of the authority of State anti-discrimination legislation. The majority of the court (Barwick, C.J. and Aickin, J. dissenting) found that in the absence of Federal legislation or awards covering the area of discrimination, State anti-discrimination legislation is valid. They held that the right of termination provided in the Airline Pilot's Agreement is not an absolute right but a right that must be exercised with regard to the lawfulness of grounds for its exercise.

Stephen J decided in part:

"where the ground for dismissal with which a State law deals is unrelated to industrial considerations and instead relates to discrimination, whether upon the grounds of sex, race or religion, the existence of a Federal award or agreement will present no situation of inconsistency".

Thus, the Equal Opportunity Board order to Ansett to employ Mrs. Wardley was to stand and legislation providing for equal opportunity in employment was reinforced particularly where Federal awards were involved.
On the same day as the High Court decision was announced, Deborah successfully completed her flight training by passing her 'check to the line' test and was given her first posting to be based in Sydney. She was delighted with all three events. Women's groups too were delighted and the bans against Ansett were lifted.

Career at Ansett

Miss Lawrie (she has reverted to her maiden name) is still flying for Ansett and is now a First Officer of a 727 jet. She expects to begin training as a captain in the near future and to gain her command within the next 12 months. She told a magazine, "To occupy the left hand seat and finally accept all the responsibilities associated with command is one of the high spots of an airline career and one I eagerly anticipate".

Later in 1980, she was accepted as part of the first group of 19 Ansett pilot trainees to fly DC9 jets and became Australia's first woman jet pilot. In January 1981 she joined Felicity Bush, Ansett's second woman trainee pilot, (who actually applied to join Ansett before Miss Lawrie) for a press conference, a departure from her agreement with Ansett not to talk to the press. (Two additional women pilots have joined Ansett since). On 20 February 1982 Deborah won the Freda Thompson Aerial Derby at Moorabbin Airport against a field of 10 male competitors. Then, on 28 September 1985, Miss Lawrie became the first Australian woman pilot to fly an international route as she co-piloted Ansett's Boeing 737 jet from Sydney to Vanuatu.

She graduated to Ansett's largest aircraft, the 727, in 1986 and said in an interview with a women's magazine that she is still recognised by members of the public but feels "accepted as a normal crew member by her colleagues". Deborah's acceptance into Ansett was not however without some procedural modifications at the Airline. Previously crews on layover at an airport had been provided with two hotel rooms - one for the male pilot and co-pilot and the other for the female crew members. Since Deborah's arrival all Ansett flight crews are provided with individual rooms.
She is happy within the current environment at Ansett and expects to remain with the company. She indicated that she had felt like giving up her battle with the company especially at the time of their appeal to the Supreme Court, that she had lost some faith in the judicial system, but that the support of friends and family had kept her spirits up.\textsuperscript{140} She said, "although there was a lot of drama, I'd do it all over again. I've got a job and a lifestyle I love."\textsuperscript{141}

Analysis of the case

The Wardley/Ansett case was unique in a number of respects. Its unique features were both the cause of its historical importance as a pioneer in the social and legal legitimisation of equal employment opportunity and a means of highlighting the serious inadequacies in legislation and procedure which can facilitate only marginal equality of opportunity.

These unique features centred around the two protagonists themselves - Deborah Wardley and Ansett Transport Industries/Sir Reginald Ansett but included the roles played by the Equal Opportunity Commissioner and Board, the media, women's groups and the community in general.

Deborah Wardley herself was a determined and somewhat privileged young woman attempting to enter a highly-paid, glamorous and prestigious, all-male profession. Her qualifications, experience, aptitude test results and recommendations were impeccable and she continued to enhance these during the course of the dispute. Her enthusiasm and motivation could not be questioned. She was accustomed to getting what she wanted; had always been competitive and 'a winner'. She remained self-confident and persistent throughout the course of the case.

Mrs. Wardley also had access to considerable resources. She was well connected socially and within the aviation industry. Although not apparently personally wealthy she had access to financial resources through her husband, family and friends as well as financial support from the public. She had the advantage of free legal representation - both her solicitor and barrister were friends. Her own resources included knowing and understanding her rights and being able to identify the discrimination against her, being able to argue articulately and cogently on her
own behalf, having the stamina and willpower to fight against a large, powerful, corporate body headed by the notoriously autocratic Sir Reginald Ansett and realising the strategic importance of pursuing her claim to become a pilot in an industry with only two domestic employers.

Mrs. Wardley also had considerable emotional support again from her husband, family and friends as well from the media, women's groups, political groups, professional associations and many individual members of the public. During the difficult latter part of the case she also gained the industrial support of her employee association - the Australian Federation of Airline Pilots.

Ansett Transport Industries were also unique in the often inept, uncoordinated and totally reactive manner in which they handled the Wardley matter. A notable example of this is the coexistence of a recruitment/selection policy stating that all applicants for trainee pilot positions were to be interviewed with the strongly held personal attitude of the Chief Executive against the employment of women pilots. Similarly, the Ansett decision to reject Miss Lawrie outright rather than put her on the waiting list (as had been done with Lorraine Cooper) could be considered a tactical error on the part of Ansett.

It was only at the conciliation stage at the suggestion of the Commissioner, that Ansett applied for an exemption from the legislation. They could have done this as soon as the complaint was lodged. Even when the exemption request was considered Ansett failed to provide evidence to support their strength and safety grounds for legitimately excluding women from positions as pilots. They certainly did not appear to take the matter seriously at this early stage.

A major blunder occurred when, six weeks after requesting a re-application from Deborah and advising her that they would comply with the provisions of the Equal Employment Opportunity Act, Ansett's General Manager sent a letter to WEL in Perth categorically stating that Ansett would not employ women as pilots.

Then, after Mrs. Wardley had succeeded at the second Equal Opportunity Board hearing, Sir Reginald Ansett increased the identification of the
case with him personally by threatening on TV that 'the battle had only just begun'. He/the company now appeared to be taking the matter seriously. Ansett officials were divided on whether the subsequent boycott was having an effect on the company and indeed the company's Board was divided on the whole Wardley issue.

This lack of cohesion within the Ansett ranks, together with the company's reliance on legal niceties rather than substance in the legal proceedings when added to the fundamental central issue that Deborah had done better on all the selection criteria than at least one of the successful male applicants, highlighted the overt and quite blatant discrimination that had occurred. Not only was the discrimination blatant but it was a source of some pride to the Chief Executive and other senior officials of the company.

Sir Reginald Ansett, like Deborah Wardley, was accustomed to getting what he wanted. What he wanted in this instance were men and only men flying 'his' planes. Ansett couched this view in the familiar cry of managerial prerogative - an employer's right to employ whomsoever he wishes. He was an obstinate man who did not take defeat well and yet defeat was all round him during this period. Personally, age and illness were defeating him and professionally, there was the collapse of Associated Securities, his loss in the airport rent-a-car battle, the takeover threat of Holmes a'Court and the loss of market share to TAA.

It seemed that when Sir Reginald realised that the Wardley issue was serious he became more involved as well as more inclined to 'play dirty'. Delay via the 'waiting list' had worked for Lorraine Cooper but it was too late to use that technique with Deborah. Expensive and time consuming legal proceedings appeared to be the technique attempted including jurisdictional challenge - a familiar legal technique often used by recalcitrant employers to wriggle out of otherwise inescapable obligations.143

The low point came when the company finally offered Mrs. Wardley a position in their next pilot trainee intake but indicated that they would terminate her employment as soon as she started. The justification for her dismissal would come from their proposed investigation of a
flying incident that had occurred a year earlier which presumably would cast doubt on Mrs. Wardley's flying abilities or safety procedures despite a previous investigation of the incident and complete exoneration by the Department of Transport. The investigation began with the outraged AFAP representing Mrs. Wardley when Ansett officials refused to continue the investigation with the AFAP representatives in the room. During my discussion with Deborah she indicated how appalled she was by this desperate and vindictive event.144

The extent of Sir Reginald's personal investment in the matter can be seen from his choice of his last day as Chairman of Ansett. The company, under new operating leadership, had finally assured Deborah of continuing employment regardless of the, yet to be brought down, High Court judgment and had made a commitment to her fair treatment. There were still however a number of inexplicable delays to Deborah's first Ansett flight which most of her trainee group had already completed.145 It could be inferred that the other two trainees who were also delayed were held back to preclude further suggestions of victimisation. Finally, on the day Deborah first flew an Ansett plane, Sir Reginald resigned as Chairman of the Ansett Board. I doubt that this was coincidental.

The Equal Opportunities Commission and Board also played unique roles in the case. The Commission has two important functions - one to achieve successful conciliation of complaints and two, to educate and raise awareness about equal opportunity rights and responsibilities. Deborah's was the first complaint received under the new legislation and the Commission, as well as the Board, cognisant of their educative role did not shun publicity. The publicity that resulted called the attention of employers and the community in general to the legislation in a way that no educational campaign could have.

The media too played a crucial role. Both print and television media paid a great deal of attention to the case which is not surprising since it had all the elements of a glamorous drama - attractive and able young woman seeks entry into all-male bastion of glamour and prestige but is stymied by aging and obstinate corporate giant. This attention meant that many individuals in the community began to think about and discuss the issue of equal employment opportunity perhaps for the first time.
This publicity fuelled organisational support for Mrs. Wardley and a wide range of organisations, spearheaded by a range of women's organisations, pledged public support to her. Individuals and organisations also began to discuss the issue of the adequacy of the existing legislation and procedures and to make representations to the legislature. The organised support led to widespread boycotts of Ansett Transport Industries and illustrated how effective economic pressure can be. This was only possible however because Ansett provided a service direct to the public.

The final unique characteristic of the case was that ultimately it was resolved, not by way of judicial ruling or indeed change of heart by the parties concerned, but by a new management at Ansett. It is not clear however whether this new management was more law-abiding, morally or ideologically superior or more equality-conscious or whether it was simply more pragmatic and concerned with the negative impact on the 'bottom line'. I consider that pragmatism and profit consciousness were the driving force behind the 'new' management attitude.

Implications of the Case

Discussion of the implications of the case can be divided into implications for the victims of sex discrimination on the one hand and the perpetrators of sex discrimination on the other.

For the victims the implications are not good. Let me use by way of illustration, and in complete contrast to Deborah Wardley, a hypothetical victim of sex discrimination who is a 48 year old, female, Greek born, poor-English speaking, process worker working in a female dominated, component assembly factory. The factory is in a western suburb of a capital city where there is high regional unemployment. Her husband is an invalid pensioner and she has 5 children, 3 of whom are dependent. She belongs to a union, the Australian Workers Union, because the factory is a closed shop. All union representatives are male Anglo-Saxons. According to factory criteria, (of which she is unaware), she should have been the next 'foreman'. A less-experienced and less-qualified man is given the position.
The legislation is complainant-based and therefore limited.\(^{146}\) It relies on a victim identifying that discrimination has occurred\(^{147}\) and then proving that it has occurred. This requires a requisite degree of knowledge and perspicacity, stamina and financial means as well as solid proof of the discrimination. Our hypothetical victim may not recognise the discrimination - she has been at the factory 16 years and foremen have always been men! If she did recognize it, would she know how and where to complain? The Act does not allow for representative complaints but even if it did the male-dominated union, also representing the new foreman, would by unlikely to support or assist her. If she knew how and where to complain, would she? The provisions in the Act regarding victimisation are of little practical use and she may lack the support of her family and co-workers. If she did complain and the matter came to conciliation her wily and astute employer may present a water-tight case in support of the male foreman. What information can she present? Conciliation assumes an equality of bargaining power that mostly does simply not exist.

If she could present and support an argument at conciliation but the employer is intransigent, what then? She lacks the financial and emotional resources to proceed - the case cost Deborah Wardley around $12,000 and that excluded legal representation. If Board proceedings did ensue the woman, if fighting a well-resourced and determined employer, could face an appeal to the courts for a complete rehearing.

The media won't find the woman particularly interesting so she is unlikely to get public support but even if she did the employer could not be hurt economically because it produces component parts for an industrial, not consumer, market. Moreover, our victim is unlikely to be so fortuitous as to experience a change in management who reverse the previous manager's decisions.

Margaret Thornton gives the view of many legal commentators and feminists when she describes the legislation as tokenistic. She says:

"First, the legislation operates within narrow parameters, further severely weakened by the exceptions and, secondly the procedure of the complaint-based system is fraught with
obstacles designed to deter all but the most intrepid complainant faced by an intractable respondent because of the almost insuperable burden of proof, the fear of public humiliation and indignity together with the possibility of substantial costs. The occasional complainant who successfully withstands these vicissitudes will be rewarded with the job or the promotion, accompanied by a fanfare of media publicity. Proponents of the legislation will then smugly pronounce on its 'success', forgetting the multitude of disadvantaged women who did not realise they were being discriminated against, who were unable to show comparability because they worked in female-dominated occupations, who justifiably felt that their jobs would be placed in jeopardy or who simply lacked credibility because of the nature of the power structure between the women and her 'boss'.

Proponents of the legislation on the other hand argue that the importance of the legislation is that it is a public acknowledgement that discrimination exists and that the obligation is on the State, employers and employees to redress it. That this is an important gain to be defended and extended but that legislation cannot, in and of itself, redress the oppression and inequalities which are structurally entrenched in our industrial and social existences. Legislation might facilitate change but it requires real desire and effort from the State, employers and employees for change to occur.

The implications for the perpetrators is the obverse of the implications for the victim. If we believe that the lot of the victim has improved then that impinges on the range of activities and behaviours open to the perpetrator. The economic effect of the Wardley boycott would not have gone unnoticed by other employers but neither would the blatancy of Ansett's discrimination against her. It is quite widely held that the view of most employers now is that the legislation is serious, it can be implemented and that complaints and hearings can be costly. Employers therefore accept that they must comply with the Act and that it is unacceptable to blatantly discriminate, but the notion of managerial prerogative is still strong and astute employers have quickly adopted practices and procedures that minimise the risk of complaints being
lodged against them while still providing staffing outcomes consistent with their preferences.

The trends exhibited in the complaints brought to the Equal Opportunity Commission support a view somewhere between tokenism and effectiveness. On the positive side, the Wardley case is credited with a substantial number of 'white collar' women bringing discrimination issues to the Commission during the period 1980 to 1983. In 1983/84 complaints began to include 'blue-collar' women and their representation has increased steadily. Trends also include considerably fewer complaints dealing with offer or termination and more about terms and conditions and a trend to higher provision of settlements and a reluctance to go to hearing before the Board. Both these trends are consistent with a 'Wardley effect' and a related increased credibility of the Equal Opportunity Board.

Faye Marles, the ex-Commissioner, believes however that there is a long way to go. She considers that the results of equal opportunity legislation have been less reformist than anticipated. She cites ignorance, vulnerability, perceived cost (financial and emotional) and perceived ineffectiveness as the main reasons and says that the most vulnerable and therefore more exploited sector of the workforce, blue-collar workers, is under-represented in complaints coming to the Commission. She is optimistic however that the new Federal affirmative action legislation will have a major impact on this by shifting the primary emphasis from complaints to programs and thereby leading to a higher level of awareness, legitimacy and empowerment.

Conclusion

To quote from Faye Marles in her 1985 Annual Report to Parliament:

"Sex discrimination remains the most widespread, persistent and 'normal' form of unequal opportunity in this community. Even after a decade in which women's issues have been politically acknowledged, anti-discrimination laws enacted, and affirmative action programs begun, the social reality for Victorian women has not changed dramatically ... In general, women continue to
confront social, industrial and even legislative barriers whose practical effect is to marginalise them".

Deborah Wardley's struggle to become an airline pilot with Ansett Transport Industries was in no way representative of the widespread discrimination which Ms. Marles referred to. The similarities between Mrs. Wardley's circumstances and those of a 'typical' victim of unequal opportunity would be at best few. Nevertheless, there is at least one similarity, a fundamental similarity, that of discrimination on the grounds of sex. And that fundamental similarity together with all of the unique features of the Wardley case are what give the case its historical importance.

The Wardley case not only changed the nature of the Australian airline industry but it substantially raised the consciousness of the community, men and women, employer and employees, about equal employment opportunity in general and sex discrimination in particular. Faye Marles says "the most effective education has taken place through the publicity generated by tribunal hearings, which have largely been reported Australia-wide. It is possible to trace generalised change from the more significant of these cases". Attitudinal change has resulted from this increased awareness, women have reassessed their own experience in the light of tribunal hearings and employers have reassessed their previous practices. Most employers are now committed to the form of the legislative provisions if not the spirit.

In addition, the case has provoked widespread and productive discussion of the adequacy and effectiveness of the existing legislation and procedures in combating both direct and indirect discrimination. Some legislative improvements have already been effected and more are being considered. It has however become increasingly obvious to social reformers that reform is required on a much wider front than only legislative reform. Real equal employment opportunity will only be achieved as a result of considerable social, industrial and other structural changes taking place in concert with the important legislative changes.
TO: ALL QANTAS, A.T.I., T.A.A. AND E.W.A. PILOTS

FROM: THE PRESIDENT

As you are the pilots of the major airlines in Australia which do not yet have women pilots, I write to you to encourage you to give thought to the possibility of working with a female pilot and to be, therefore, in an informed position should you be asked to take some action to support or reinstate women pilots.

There has been a highly publicized argument between Mrs. Deborah Wardley and Ansett Transport Industries.

The Federation has been pressed by both parties for support. Mrs. Wardley is a member of the Australian Federation of Air Pilots.

I have taken the view that the Federation does not yet have the right to interfere with the employer's selection of pilots except for:

- (a) our request that preference be given to members of the A.F.A.P., and
- (b) our request that pilots from other countries not be employed when we have high pilot unemployment in Australia.

So far we have, therefore, stayed out of the Wardley - Ansett dispute - she is a member and an Australian, so we have no comment on the situation so far.

But the rumours are that we are about to be faced with a possibility of Mrs. Wardley being employed, but then dismissed for some reason or another.

The Ansett Pilot Contract permits the employer to terminate a pilot 'during the first six months of service, by seven days notice in writing', and S.6.H. provides that during the 'period of Initial Service which shall be 12 months, a pilot's services may be terminated without recourse to Grievance Procedures'. A pilot shall be given the reasons for dismissal in writing.

So, if the rumours are true and Mrs. Wardley is employed, then fired, then she has only three means of recourse that we know of:

1. she can ask her fellow members of the Federation for some assistance,
2. she can take the dismissal to the Flight Crew Officers Industrial Tribunal
3. she could take other legal action

She cannot use the Grievance procedures.
This is not a fight that we have been going looking for. We do not want any fight with Ansett.

Employment of pilots is fundamentally a Management prerogative.

But, victimisation of a pilot is a Federation matter. Victimisation of a member is a Federation matter.

Our Constitution provides for both male and female pilot members. We cannot turn a blind eye to unfair treatment of a member just because she is a woman.

The whole question is a complicated but important one. I have written this to all airline pilots because not only could you Qantas, T.A.A. or E.W.A. pilots be faced with Mrs. Wardley as a prospective pilot if she is unsuccessful with Ansett, but undoubtedly she will not be the one and only girl to apply for an airline pilot job.

The Federation has no policy on whether pilots are male or female. We have a number of female pilot members. There is no D.O.T. restriction on the sex of Airline Transport Pilot Licence holders.

It appears to be against Australian law to discriminate on the grounds of sex.

But there is an argument that up to a point and within that law, the employer should be able to say who he is going to employ.

Arguments like 'women will not make a career of it' or 'women will need a lot of time off to have a family' are all probably illegal because they are sexually discriminatory, and against Australian law. But they are also probably wrong - we have a number of female pilots who have made careers and who have not taken time off to have families.

There are other arguments about the competency of women. That should be taken care of in licence renewal checks. There are psychological questions about the possible problems with a female Captain and a male First Officer.

I need not remind you that there are women Prime Ministers, women doctors, barristers, judges, a cosmonaut, space shuttle crew, racing drivers, world circumnavigators and some women are successful in business.

Many men have grown accustomed to wives running things, so I guess it is not insurmountable and in any case seems to have been handled in a few limited instances with airlines overseas, without drastic changes to safety.

So much for the pros and cons.

Now the purpose of this newsletter is to inform you of the Federation's position.

We could be backed into a corner if Ansett come up with a dishonest and unfair solution to what they see as their problem.

The Federation is not accustomed to having one of its members dismissed for trumped up, ill conceived, or dishonest reasons.
If Mrs. Wardley is deemed to have been dismissed in such a manner, then we could well be coming to you the members, especially the Ansett pilots to ask for your decision on how much industrial support you will provide for a member deemed to have been treated unfairly or victimized in a manner that we cannot accept.

Contracts

The Qantas renewal is in progress and the Qantas pilots have been kept well informed on progress by the Branch Chairman's newsletter.

The T.A.A. Contract is at the printers and the T.A.A. pilots should get their copies very shortly.

The increase in DTA and some allowances that were negotiated with T.A.A. have been claimed by Ansett pilots. You will be kept advised of progress.

The East West Contract has been renewed.

Don Gray will ensure the East West pilots get the details quickly.

The Connair Contract was renewed last week.

All of that has taken place over the last month. So while we may be quiet, we are not idle.

D.G. Shrub (Capt.),
President
AUSTRALIAN FEDERATION OF AIR PILOTS
MEMBER INTERNATIONAL FEDERATION OF AIR LINE PILOTS ASSOCIATIONS

MANAGER...LEONARD J. COYSH


PRESS STATEMENT

Ladies and Gentlemen of the Press,

We have called this Conference today to bring you up to date on what is being called the Deborah Wardley affair.

You are all aware that the Federation has taken a low profile on Mrs. Wardley and her attempts to gain employment with Ansett Transport Industries. This attitude was adopted because as has been previously explained, the Federation does not represent pilots in any attempt to gain employment. Ansett has taken advantage of every avenue at law and Mrs. Wardley's case has been upheld at every stage so far. She commenced employment with Ansett Transport Industries on Monday, November 5th.

From that day on she ceased to be Mrs. D. Wardley and became D. Wardley - Member - Pilot employed by Ansett Transport Industries.

On Friday, November 9th, the following letter was delivered to Deborah:

'We wish to advise that it is our intention to investigate the circumstances in which aircraft VH-DJF under your command was involved in an incident with VH-DMQ under the command of R.G. Lewis at Moorabbin Airport during the evening of 28th November, 1978.'
Our investigation will include an interview with you at a time to be advised during the coming week.

Meanwhile, we would appreciate receiving from you any material or reports which may be of assistance to us during the investigation. Such material should reach my office no later than Monday, November 12th at 5.00 p.m.

The incident referred to involved an aircraft under Debbie's command – she was instructing a trainee pilot. Our pilots at Moorabbin describe the so called incident as a 'minor everyday occurrence that flight instructors are trained to handle and dso in their stride.

At this stage the bona fides of ATI became suspect and the Federation requested Debbie to advise ATI that they would be represented at any interviews with her on this matter.

In answer to their letter she courteously provided Ansett Management with a copy of the Air Safety Incident Report (225) filed by her immediately after the event.

On Wednesday, November 4th, she was asked to supply a copy of the D.O.T. finding in the matter. She replied to the effect that she would furnish the report at an interview they asked her to attend this morning. At 11.30 a.m. this morning she arrived at the interview accompanied by the Acting President, Victorian Branch Chairman and myself.

A spokesman for Ansett, General Operations Manager, Captain A.F. Lane admitted that the investigation was outside the provisions of the Airline Pilots Agreement 1978.

The Company refused to continue the interview unless it could nominate Mrs. Wardley's representatives.
We made it quite clear that because the interview was outside the Contract we would insist upon the Federation representing Mrs. Wardley.

Accordingly, the meeting broke up and Debbie is again left wondering. The reason for calling this Conference is to highlight our very real concern with a number of factors in this current situation.

(1) Mrs. Wardley is being vindictively assailed and as Federation we will not tolerate victimization.

(2) In a quite inhumane and unforgiveable manner she has been harassed right throughout the most important course of her life. Instead of applying her undivided attention to the F27 Engineering Course, she has been constantly distracted by letter and interview.

Last weekend when she should have been studying she was under enormous pressure looking up files, attending Conferences, etc. Today she was taken from her lecture to attend this interview and is expected to regain her concentration this afternoon in the light of today's developments.

All of this for what? For a minor incident or occurrence that happened in 1978 and for which she has been exonerated by the D.O.T.

(3) The Federation sees this as a vindictive attack on an individual member - in fact, it is the most blatant and calculated attack we have seen in the history of the Federation and we will not tolerate it. She has been denied Federation representation at an interview that by admission is outside the provisions of the Agreement she is employed under.

Mrs. Wardley and the Federation are quite prepared to meet with the Company at any time, but only on fair and equitable terms. - NOT on the basis of a stacked
Mrs. Wardley will not be making any statements on this phase of her struggle, so any questions should be directed to either Captain Fitzsimons or myself.

Thank you.
References and Footnotes

1. The facts of the case, unless otherwise indicated, are drawn from the decision published by CCH Australia Limited.

2. At Deborah Lawrie's request the titles Miss and Mrs have been used throughout this report in all references to her.


4. Figures obtained from A.F.A.P., 4 June, 1987. (East-West 4, Ansett 3, Pel Air 1, Lloyds 1, Australian 1). There are now 4 female pilots with Ansett.


19. The one exception was a Belgian airline that didn't fly their female captain of a Boeing 737 on North and Central African routes where she was not accepted as an equal.

25. The proceedings and evidence submitted before this hearing were not reported by CCH Australia as it was later declared invalid. All information regarding the hearing was extracted from press reports.
34. Melbourne 'Age', 10 February 1979.
42. Melbourne 'Age', 16 February 1979.
61. Melbourne 'Age', 7 June 1979 (Julian Phillips, Senior Law Lecturer, University of Melbourne)
62. Melbourne 'Age', 7 June 1979 (Julian Phillips, Senior Law Lecturer, University of Melbourne)
63. Melbourne 'Sun', 8 June 1979.
64. Sydney 'Telegraph', 7 June 1979.
69. 'Australian', 18 June 1979.
74. 'Australian', 29 June 1979.
75. 'Australian', 29 June 1979.
80. Melbourne 'Sun', 1 August 1979.
81. From Mary Owen, 21 May 1987.
82. Melbourne 'Age', 20 August 1979.
84. 'National Times', 25 August 1979.
87. 'National Times', 25 August 1979.
89. Melbourne 'Age', 29 August 1979.
91. 'Australian', 11 October 1979.
93. Melbourne 'Age', 12 October 1979 and AFAP records.
95. 'Australian' 18 October 1979.
114. According to Deborah Lawrie, 11 September 1987, this took place on 23 December 1979.
120. From Deborah Lawrie, 11 September 1987.
123. 'Australian', 17 January 1980.
126. From decision reported as Ansett Transport Industries (Operations) Pty Ltd v. Wardley EOC 92-003CCH.

127. From decision reported as Ansett Transport Industries (Operations) Pty Ltd v. Wardley EOC 92-003CCH, pp.75,273.


129. 'Australian', 5 March 1980 and from Deborah Lawrie, 11 September 1987.


132. 'Women Australia', April/May 1984.


139. From Deborah Lawrie, 11 September 1987.

140. From Deborah Lawrie, 11 September 1987.


144. From Deborah Lawrie, 11 September 1987.


147. Crosby has an interesting psychological thesis on why women do not recognise discrimination against themselves as easily as they do against other women. See 'Portfolio', June 1987.

149. Ranald, P. and Burgmann, M., "Are women getting more than they deserve", Scarlet Woman 23, p.11.


Bibliography


Bevege, Maragaret, "Women's Struggle to become Tram Drivers in Melbourne, 1956-75", in E. Windshuttle (ed.) Women, Class and History 1945-78, (437-452).


Dwyer, Joan, "What does Equal Opportunity Legislation do for Women in Australia?" Women Australia, April/May 1984, (15,33,35).


Equal Opportunity Law and Practice and Landmark Cases, C.C.H.

Feinberg, Linda, "Once upon a time, there was a miner, and she...", Scarlet Woman, 16 1983, (20-24).


Malloch, Marg, "Is Equal Opportunity Possible?", Womanspeak, August-September 1983, (10-12).


Ranald, Pat and Burgmann, Meredith, "Are Women Getting More than they Deserve", Scarlet Woman, No. 23, (11-13).


Victorian Commission for Equal Opportunity, Annual Reports.

Victorian Equal Opportunity Board, Annual Reports.

Wardley, Debbie, "Debbie Wardley", Women Australia, April/May 1984, (11).

Author/s:
Dahn, Susanne

Title:
Wardley v. Ansett: an examination and analysis of a leading and influential equal opportunity case

Date:
1987

Citation:

Publication Status:
Unpublished

Persistent Link:
http://hdl.handle.net/11343/35884

File Description:
Wardley v. Ansett: an examination and analysis of a leading and influential equal opportunity case

Terms and Conditions:
Terms and Conditions: Copyright in works deposited in Minerva Access is retained by the copyright owner. The work may not be altered without permission from the copyright owner. Readers may only download, print and save electronic copies of whole works for their own personal non-commercial use. Any use that exceeds these limits requires permission from the copyright owner. Attribution is essential when quoting or paraphrasing from these works.