



## Speech given on the 25<sup>th</sup> anniversary of the Women Barristers' Association

9 OCTOBER 2018

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### INTRODUCTION

I am delighted to have been invited to speak at WBA's 25<sup>th</sup> anniversary. I am overjoyed that WBA is still here – and flourishing – 25 years after its inception.

I was Convenor of WBA in 1999 and I was actively involved for several years before that. The primary focus of WBA at that time was on implementing the recommendations of the report on *Equality of Opportunity for Women at the Victorian Bar*.<sup>2</sup>

### CULTURE OF THE BAR

Let me first give you an example of what the culture of the Bar felt like at that time. Some of the clerks would have their List dinners at male-only clubs.

I recall being a junior barrister and attending my List dinner at the Australia Club. I felt awkward celebrating my List in a club which did not permit women to join. I felt much more awkward when the after-dinner speaker, a very senior male Silk, regaled the room with the advice that whenever an adjournment is called in court, a barrister should head '*straight for the urinals*'. Side by side with one's opponent. The sense of exclusion felt like a slap over the face. There were so few women in the room – and all so junior – that I sensed the speaker felt he could safely ignore them – the women were simply invisible.

One of the recommendations of the *Equality of Opportunity* report, supported by WBA, was that List dinners not be held in men-only clubs.

### REPORT: CULTURE/BRIEFING PRACTICES

The report was commissioned by the Bar Council. The Report found that there were difficulties for women on two fronts, the culture of the Bar (as I've described) and briefing

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<sup>1</sup> Court of Appeal, Supreme Court of Victoria.

<sup>2</sup> Rosemary Hunter and Helen McKelvie, *Equality of Opportunity for Women at the Victorian Bar: a report to the Victorian Bar Council* (1998).

practices.

The report recommended that visibility be addressed by adopting strategies for ensuring greater representation of women on the Bar Council and its sub-committees.

The report found that the pattern of briefing practices, based on a 3-month survey, demonstrated that women were not receiving appearance briefs in proportion to their numbers at the Bar. This was so especially in the higher courts and especially in areas traditionally viewed as 'male' areas of practice – criminal law, personal injuries, commercial law, and appeals.

The report recommended that a directory of women barristers be compiled. WBA made the radical suggestion that the directory be available on the internet. The directory was to overcome the informal social connections and connections of privilege that many of the male barristers enjoyed. The Bar Council thought this was such a good idea that it considered that a directory be prepared for all barristers. Ultimately this became the on-line Vic Bar 'find a barrister' webpage.

The report also recommended that when barristers were being selected for briefs, clerks and Silks should commit to considering whether there were women in the chosen field of expertise. It also recommended that there be opportunities found for women to have speaking roles, by taking witnesses, by dividing issues on appeals, and by encouraging out-of-court presentations to solicitors.

## **ROLE OF WBA**

On all of these matters, WBA was front and centre in working with the Bar Council to promote women's integration at the Bar. Indeed, the report recognised the importance of the role WBA had played in seeking gender equity and would continue to play. We wrote submissions on how to convert the recommendations of the report into realistic practical measures. We commented on the Bar Council's response to the report which, as it happened, was launched twenty years ago to this very day, 9 October 1998.

We attended meetings with working parties, clerks, and with a group of people the Bar Council described as 'opinion-setters' at the Bar in a series of meetings chaired by an external consultant. I recall that one of the opinion-setters made the well-intentioned but misguided suggestion that in the directory we cleverly refuse to reveal the gender of any barrister.

## **REAL PROBLEM: MARGINALISATION**

I was very conscious that at the heart of the problem was that many women had been marginalised at the Bar. Justice Cathy Branson of the Federal Court had said that 'a significant problem' for women in the legal profession was that 'we are made to feel that we are outsiders – not of the mainstream'.<sup>3</sup>

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<sup>3</sup> Ibid 33.

My personal aim was to try to ensure that women barristers moved from the marginal to the mainstream. WBA was focused upon ensuring that the Bar as an institution accepted and supported women and enabled them to thrive as barristers. Everything I did was to try to progress that outcome.

## **THE JUDICIARY: AUSTRALIA v USA**

Recently, many of you may have been following the debacle of Brett Kavanaugh's appointment to the US Supreme Court. Take comfort from the fact that the Australian legal system is very different.

I attended a conference of judges last Friday at which Justice Geoffrey Nettle spoke from Australia's High Court. He could speak on any subject of his own choosing. He chose to speak on the increasing number of women in the legal profession and the judiciary.<sup>4</sup>

He observed that the increasing feminisation of the profession may bring with it more creative and more effective practitioners. This was evident from the achievements of women lawyers from the moment they were legally permitted to practise. He acknowledged this was assisted in no small part by organisations like WBA. He also commented that, in the foreseeable future, the number of women practitioners and judges will likely exceed that of men and that this will have welcome implications for every aspect of the profession.

## **WOMEN NOW MAINSTREAM – GENDER EQUITY?**

We can now be confident that in Victoria women barristers are part of the mainstream of the Bar. The problem of visibility is a lesser one. Having said that, from where I sit on the Court of Appeal, women barristers in speaking roles are few and far between. This is especially so in civil appeals. There is much more to be done to achieve proportionate representation. Nevertheless, we have good reason to be celebrating the successes we have had towards gender equity and the importance of WBA to that success.

I congratulate WBA on 25 years of continuous hard work on reform. We should all feel justifiably proud. Long may WBA continue.

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<sup>4</sup> 2018 Judicial Conference of Australia Annual Colloquium, *Keynote address: A Feminising Profession* (Melbourne, 5 October 2018).