

**THE CHANGING SCENE OF WOMEN IN PUBLIC LIFE IN AUSTRALIA,
WOMEN IN ASIC NETWORKING SERIES, WEDNESDAY, 12 OCTOBER
2011, ASIC, LEVEL 20, COMMONWEALTH BANK BUILDING, 240 QUEEN
STREET, BRISBANE.**

How delightful to be with so many clever young women lawyers, working at ASIC to ensure Australia's financial markets are fair and transparent and that investors and consumers are properly informed about them. Most people consider the history of ASIC began in 1991 when, as the Australian Securities Commission (ASC), it replaced the National Companies and Securities Commission (NCSC) and the Corporate Affairs Offices of the States and Territories. It has grown exponentially in size, responsibilities and power over the past 20 years.

ASIC's history is but a pin prick in the timeline of Australia. We should reflect for a moment that we are meeting in Me-an-jin, now known as Brisbane, on the traditional lands of the Turrbal and Jaggera people. For tens of thousands of years before European settlement, their women held meetings to discuss how best to work within their community for the common good. Although in a very different context, in essence those meetings were not so different to ours tonight.

I apprehend that my early career path has been very different to yours, although there are some parallels. I studied law at UQ in the 1970s, then the only law school in Queensland, with lots of present-day high flyers, including Noela L'Estrange, the QLS CEO, whose presence tonight I warmly acknowledge. By about third year, I was disillusioned with the law and uncertain that it was the career for me. I became re-inspired when the UQ Student Union sponsored a visit by consumer advocate, Ralph Nader. His address persuaded me that the law could be used as a powerful force for good. At the same time, I took up an opportunity to volunteer with the newly formed Aboriginal and Torres Strait Islander Legal Service. On lecture-free days, together with other students, I would attend court and instruct barristers appearing for Indigenous defendants. That was when I realised that advocacy, especially oral advocacy, would be my career. I was fortunate to become associate to Judge Alan Demack, then in the District Court, who had recently completed the Commission of Inquiry into the Status of Women in Queensland. As a result, he was keen to encourage more women to take up law as a career. In 1976, I went as his associate to the newly formed Family Court. I know that some of you have worked as judges' associates; for example, Lesley Symons who asked me to speak tonight was Judge O'Sullivan's associate when I was a District Court judge in the 1990s.

In 1976, as a law graduate, I joined the Public Defender's Office, then an independent limb of the Queensland Department of Justice, providing free legal assistance to impecunious people charged with significant criminal offences. I was the first woman to join the Office so, needless to say, it was a male-centric place. Walls were covered with girlie pictures. Discussions about cases were replete with swearing and the f-word – and I don't mean

feminism! And debriefing and celebrations were usually drinking sessions in the public bar of the Grosvenor or the "Cri". But it was very exciting work. Joh Bjelke-Petersen had long been Premier, and Queensland Police were notorious for solving crime by "bricking" or "verballing" those whom they believed were responsible, especially if the suspects were powerless and vulnerable. I loved my work as a criminal barrister, cross-examining police officers, applying to have admissions excluded as unfairly obtained evidence, and addressing juries about whether confessions had been made at all, or if made, whether they had been obtained fairly. I believed I was using the law to make a difference.

Constant vigilance is always needed, but post-Fitzgerald Inquiry and with the CMC, police corruption is not what it was in the 1970s and 1980s. Were I a law graduate entering the profession today, I wonder whether, like many of you, I would see ASIC as a way to use the law to make a positive, powerful difference.

I worked as an Assistant Public Defender for over 13 years, during which I had my first three children. I found this a successful way to maintain my professional career whilst having babies and rearing pre-schoolers. Perhaps some of you have found a career at ASIC equally compatible with child-bearing and child-raising.

The Public Defender's Office in the 1970s and 1980s proved to be a great training ground for the broader legal profession. Many young lawyers gained their stripes there, before setting up their own successful solicitors' practices or going to the Bar. Many, like me, eventually became judges, including Justice Doug Drummond, now retired from the Federal Court; Judge Miller and Judge Healy, now retired from the District Court; and current District Court judges Judge Shanahan, Judge Rafter, Judge Debra Richards, Judge Devereaux, Judge Long and Judge Katie McGinness. I apprehend that whilst many lawyers will have long-term, perhaps even life-long careers at ASIC, ASIC will also be a training ground for lawyers who go on to other career paths as solicitors, barristers, in-house corporate lawyers, in business and as judges. One of your most famous alumni is my friend, former National Commissioner of ASIC, Berna Collier, now Justice Collier of the Federal Court.

I am delighted that young women lawyers like you take for granted your right to vote, to become lawyers and to participate fully in public life. In a sense, that is as it should be. But it is important to remember that in many parts of the world women still do not have the opportunity to participate equally with men in public life. Even here in Australia, the right to participate in public life is a relatively recent phenomenon. It was only early in the 20th century that most Australian non-Indigenous women obtained the right to vote, and a little later that they obtained the right to be admitted as lawyers. Women practising as lawyers is an essential aspect of women exercising their full democratic rights. This is because an independent legal profession plays a vital role in a democracy, ensuring community access to the rule of law, that mighty instrument which delivers equal justice for all, regardless of gender, race, colour, religion, power, wealth or sexual preference.

When I was appointed a District Court judge in January 1991, the same year as ASIC's predecessor, the ASC, was established, there were no women judges in Queensland. The first Queensland woman magistrate, Grace Kruger, was appointed the previous year when Margaret White also became a Master of the Supreme Court. Some other jurisdictions had just one or two women judicial officers. So much has changed in 20 years. Today, in the High Court of Australia, three of seven judges are now women. In my court, the Court of Appeal of the Supreme Court of Queensland, half the permanent judges of appeal are women. Generally speaking, about one-third of Australian judicial officers are now women. Although the 50 per cent statistic still seems some way off, it is a massive change in just 20 years.

But although women have been graduating from law schools in equal or greater numbers than men for three or four decades, they remain under-represented at the Bar, in senior positions in law firms and at the highest levels of government. In 2010, the overall proportion of female equity partners in law firms, traditionally the key measure of success for the solicitors' branch of the legal profession, was 17.1 per cent.¹ As at 29 July this year, only 21.5 per cent of Queensland barristers were women and the percentage of women silks or senior counsel was a shocking 2.3 per cent.² In the annual report of the Queensland Court of Appeal which I prepared recently for the Chief Justice, I noted:

"The public, the legal profession and the judges are aware of the under representation of women at the Bar in Queensland and of women counsel in Court of Appeal hearings.³ This year, women counsel appeared in 10.02 per cent of all court appearances in the Court of Appeal, although they comprise 21.5 per cent membership of the Bar Association of Queensland.⁴ Of those appearances by women counsel, 11.2 per cent were in criminal matters and 8.9 per cent in civil matters. Unfortunately, this percentage is noticeably less than the percentage of women at the Bar in Queensland. It is comparable to the last two reporting years and an improvement from 6.2 per cent in 2007-2008."

I am concerned that the percentage of women counsel in Court of Appeal matters has not risen over the last three years. These statistics about women lawyers may seem disappointingly low, but do not be disheartened. They are much better than they ever have been and, on the whole, continue to improve. I hope that ASIC has adopted the Bar Association of Queensland's Equal Opportunity Briefing Policy which seeks to fairly address the under-representation of women at the Bar. I am pleased to learn that ASIC is an equal opportunity employer. I note that 58 per cent of all ASIC employees are women. But at senior executive level, ASIC reflects the position of women in

¹ C Merritt "Women lawyers win in big firm stakeouts", *The Australian*, 17 December 2010.

² D Rea, Bar Association of Queensland (29 July 2011); Bar Association of Queensland *Barristers Directory* <http://www.qldbar.asn.au> (29 July 2011).

³ See, for example, Kirby J 'The Future of Appellate Advocacy' (2006) 27 *Aust Bar Review* 141 at 155-159; Hunter, Prof R 'Discrimination Against Women Barristers: Evidence from the Study of Court Appearances and Briefing practices' (March 2005) 12(1) *International Journal of the Legal Profession* 3.

⁴ As at 29 July 2011.

the judiciary. In the 2009-2010 year, only 33 per cent of ASIC senior executives were female. Happily, one of those is the ASIC Queensland Regional Commissioner, Dr Pamela Hanrahan, who is also speaking tonight.

The under-representation of women in senior positions in the law is also mirrored in public corporate and government boards. It is regrettable that between 2002 and 2010 the number of women in public board directorships increased only marginally from 8.2 to 8.4 per cent.⁵ On government boards, things are more encouraging with about one-third of board members now being women.⁶ The Federal Government has a target of at least 40 per cent women members on government boards by 2015.

Despite Australia's long standing laws that require equal pay for equal work, the Australian gender pay gap still exists. On average, women receive 17 per cent less than men for the same work.⁷ More positively, since 2010 we have the *Paid Parental Leave Act* (Cth) and the *Fair Work Act 2009* (Cth) has introduced the right to flexible working arrangements⁸ and recognised family carers' responsibilities.⁹ The federal government has also introduced amendments to the *Sex Discrimination Act 1984* (Cth) to make unlawful direct and indirect discrimination on the grounds of family responsibilities in all areas of employment.¹⁰

I mention all this because it is important that young women like you, who understandably take for granted your right to lead a public life as an ASIC lawyer and in other ways, understand how recent that right is; how hard your mothers and grandmothers worked for it; and that although things have improved exponentially, full equality remains elusive. Remain vigilant to ensure the gains made are not diminished. Remember, it has happened in some Middle East countries. And continue to strive for full equality. In setting this contextual, historical background, I am certainly not intending to be negative about the future of women in public life in Australia. It is important on many levels that women grasp the fantastic challenges and opportunities now on offer. A major phenomenon of the late 20th and early 21st centuries has been women exercising their rights in equal numbers to men to become influential members of the legal profession and to take up powerful positions in business and on private, public and government boards. How did they

⁵ Australian Government, Equal Opportunity for Women in the Workplace *Australian Census of Women in Leadership 2010*, 4.

⁶ Australian Government, Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women on Australian Government Board's Report 2009-2010*.

⁷ National Centre for Social and Economic Modelling (2010) *The Impact of a Sustained Gender Pay Gap on the Economy*, Report to the Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs.

⁸ *Fair Work Act 2009* (Cth), Pt 2-2, Div 4.

⁹ Above, s 351, s 342(1), s 361(1).). For further discussion see, Elizabeth Broderick, Australian Human Rights Commission, "Gender equality in the workforce: A feminist approach", Speech, 3rd National Conference on Women and Industrial Relations, Darwin Convention Centre, 12-13 August 2010.

¹⁰ See *Sex and Age Discrimination Legislation Amendment Act 2010* (Cth), Sch 1.

manage without us? The truth is, with only half the community's talent, not so well.

On many occasions during my career, I was the only woman or one of a tiny group of women, in a male-dominated work environment. When the percentage of women is tiny in a solicitors' firm or in institutions like the Bar, the judiciary or ASIC, those women must operate within an organisational framework and vision designed solely from the male perspective. As the percentage of women grows to a critical mass, those women become more confident and use their voices to redefine that framework and vision to fairly include the female perspective. It is then that the community fully benefits from the equal involvement of women in public life. After entering a legal profession 34 years ago when women were a rarity, an oddity, an exception, it is a great joy to see so many more women lawyers like your Dr Pamela Hanrahan, at the highest levels of public life in Australia.

I am optimistic that the equal involvement of women in public life in Australia will lead to a change in the toxic culture still present in the media, the legal profession, all streams of government and big business. That culture is: you must work 100 hour weeks every week if you are serious about your career. Of course professional and business people, men and women, must work hard to achieve results, sometimes even 100 hour weeks. But it is not possible or desirable – in any sense – to constantly work those hours. This toxic culture is bad for decision-making; bad for economics; bad for the employer institution; bad for the community; and bad for the individual worker and their family.

The world views and life experiences of women are inevitably different to men's. I believe that by truly equal participation in Australian public life, women can work together with men to remould the framework of government, institutions and business with their own experiences and views. In doing so, women will not repress men as they were for centuries in western democracies, and still are in most of the world. Women wish to enter into an equal dialogue with men, and in that conversation, together work out how to best meet the challenges we all face in the 21st century.

I am going to make a slightly radical suggestion. I suggest some men at all levels of ASIC be included in at least some of these *Women in ASIC Networking Series*. It is important that ASIC men fully appreciate that it is in their interests, and in the interests of the entire Australian community, for women to fully and equally participate, both in ASIC and in the broader notion of public life in Australia. Including in this series a group of ASIC men, from those at the highest level to novice lawyers, will help achieve this. They need to be part of your networking and mentoring. Mentoring by women of men, and by men of women, is a positive way to ensure that men, as well as women, understand the feminine and feminist view and experience.

What can I share of my experiences which might help you succeed, as a lawyer in ASIC and as a woman in public life. Everybody's journey is different, but these are my suggestions this evening. Building a successful

career and a respected reputation does not happen overnight. It comes with years of hard and mostly unexciting slog. Be persistent and patient. Being there is half the battle. At the most basic level, keep breathing, place one foot after the other and do a solid day's work, day after day, week after week, month after month, year after year. Every so often you will surprise yourself with how much real progress you have made. The "keep calm and carry on" philosophy has a lot to commend it. And as you do the hard slog, strive for excellence and be collegiate and pleasant. Remember, as lawyers, you are part of a diverse profession, united by high ethical standards: always maintain them. Your superiors, sometimes especially the boys, can be a bit abrupt when under stress. It is their problem. But a moderately thick skin and the capacity to forgive will help, as does resilience. And be courageous: do not be afraid to speak out if you see things are not being done as they should.

Networking events like this and time with friends and colleagues with whom you can debrief are also important. Often, women friends are especially understanding. I found the fellowship and support of members of the Women Lawyers Association of Queensland of great assistance over the years and I note with pleasure the presence of the current President of WLAQ, Ms Kathryn Finlayson.

I also received encouragement and support from women who were not lawyers. I have been a member of the Zonta Club of Brisbane for a ridiculous 33 years. Involvement in a community organisation that helps others is a great way to stop work totally dominating your life. Doing things for others not only helps those others, but it also gives you a positive feeling. It can assist in reaching the goal we all have of a healthy body, mind and spirit and that elusive work-life balance.

Throw yourself into your careers with passion; strive for excellence; exercise your substantial ASIC powers fairly and responsibly; maintain the highest of ethical standards; be kind to your fellow workers; and be involved in pro bono or community work outside ASIC. And when you find that elusive work-life balance and a healthy body, mind and spirit, give me a call and take out a patent. I wish you all well and look forward to continuing this dialogue during question time and afterwards informally.