

**ADDRESS TO QUEENSLAND WOMEN JUDICIAL OFFICERS AND
BARRISTERS, 21 MARCH 2014, COMMON ROOM, INNS OF
COURT, BRISBANE.**

***A REPORT CARD ON GENDER EQUALITY AT THE QUEENSLAND
BAR AND BENCH AND THE INVISIBLE WOMEN***

I begin by acknowledging the traditional owners, the Turrbal people, here on the north side of the Brisbane River on land once known as Meanjin. They prospered here for tens of thousands of years before European contact, with women Elders offering younger clanswomen advice and support whilst sharing bush tucker and laughter. I acknowledge their Elders, past and present, as we continue that ancient tradition.

Since we met last year, the following women have been admitted to the Bar:

Laura Niel
Sarah Minnery
Simone Fraser
Fiona Lubett
Lynette Galvin
Julie Kinross
Grace Lawson
Denika Whitehouse
Rebecca Harding
Anna Bertone
Florence Chen
Kasey McAuliffe.

As for new women judicial officers, it is a much shorter list! There is but one, former barrister, Magistrate Penelope Hay.

During the coming year, we lose two senior women judges: Justice Margaret Wilson and Chief Judge Patsy Wolfe.

Next month, Justice Wilson retires after a long and exemplary legal and judicial career. With her accustomed modesty, she has eschewed a valedictory ceremony, but I cannot let this evening pass without thanking her for her magnificent professional contribution. Margaret graduated from UQ with a Bachelor of Arts and a Bachelor of Laws with honours, winning glittering prizes in both Japanese and law. She came to the Bar in March 1979 and took silk in 1992, serving on the committee of the Bar Association as a junior and as a silk. She was also a member of the Civil Procedure Division of the

Litigation Reform Commission; the board of Legal Aid Queensland; and the Incorporated Council of Law Reporting. She chaired the Queensland Child Care Review Tribunal and co-edited and contributed to Ryan, Weld and Lee's *Queensland Supreme Court Practice*. In August 1998, after almost 20 years as a barrister, she was appointed a Supreme Court judge, serving also as the judge constituting the Mental Health Court; a commercial list judge; and an additional judge of appeal. She was a member of the Rules Committee for 12 years and the judges' building committee which guided the construction and fit-out of our spectacular court building. During her 15 years judicial service, she has presided with wisdom, patience and courtesy over countless cases, including some landmark ones like *S v The Corporation of the Synod of the Diocese of Brisbane*,¹ a civil jury trial concerning a negligence action brought by a former high school boarding student who was sexually assaulted by a teacher. In 2003 she was awarded the Centenary Medal. It is fitting tonight to share with you her past advice to young women entering the profession:

"The law truly is an honourable and satisfying profession. As you contribute to it, it will reward you not only with a livelihood, but also with wonderful opportunities to serve society, whether you act for business, government, ordinary citizens or the disadvantaged. Never lose sight of the real spirit of professionalism. Savour it."²

Justice Wilson will be missed but her fine judgments will ensure she is not forgotten, long after those present tonight have retired from the law.

Chief Judge Wolfe, too, has had a distinguished career, culminating in her stewardship of the District Court over the past 15 years. She does not retire until a significant birthday in October and has made me undertake not to wax lyrical tonight on her many achievements. I made that concession on the basis that there will be an opportunity for others to do this later in the year. With the Chief Judge's retirement, the profession and the community will lose yet another iconic female judge and the District Court one of its most passionate and successful champions.

And speaking of passions, I turn now to mine: the need for gender equality at the Bar and the Bench. Let me remind you why it is important that women are approximately equally represented in these institutions and why I am concerned that this goal remains elusive, although for decades more women than men have graduated from Queensland law schools. It is not simply because I

¹ [2001] QSC 473.

² *A Women's Place: 100 Years of Queensland Women Lawyers*, Ed Susan Purdon and Aladin Rahemtula, published Supreme Court of Queensland Library, 2005, 608.

want you all to have lucrative, influential careers, although there is nothing wrong with that. It is because lawyers, together with an independent judiciary, play an institutional role in Queensland's democracy. Lawyers have a fiduciary duty to protect and pursue their clients' rights under the rule of law, unswayed by the power, privilege or wealth of others, and subject only to their duties to the court as officers of the court. This sometimes means appearing for the most unpopular and despised members of society. Ensuring access to the rule of law for all, even unpopular litigants, strengthens our democratic institutions and the broader community. Lawyers also play a critical role in ensuring that the separation of powers between the three branches of government is maintained and, in particular, that the judiciary is independent of both the legislature and the executive.

I am especially proud to see women lawyers fulfilling this role. A topical example was last year's Queensland Law Society President, Annette Bradfield, when she raised concerns about recent legislation which purported to transfer judicial power to the executive government. Those concerns were well-founded as the Court of Appeal later found in *Lawrence*.³ Barristers, as specialised legal advocates, are particularly well-placed to take on this institutional democratic role. That is why, if women are to fully embrace their democratic rights, they should be represented approximately equally with men, at the Bar and in the three branches of government, including the judiciary.

Report card time. First, the Bench. Of the Queensland-based judges in the Commonwealth jurisdiction, women comprise 17 per cent of Federal Court judges; 33 per cent of Family Court judges and an impressive 46 per cent of Federal Circuit Court judges.

Women presently comprise just under 30 per cent of Queensland Supreme Court judges; 20.5 per cent of District Court judges and 34 per cent of magistrates. The current Queensland government, since coming to office about two years ago, has appointed 17 judicial officers: four Supreme Court judges, including two to the Court of Appeal; three District Court judges, including the Chief Magistrate; and 10 magistrates. All but one (Magistrate Hay) are men. This means that only 6 per cent of these appointments are women. Whilst in no way detracting from the talents of these new judicial officers, I am concerned about the lack of gender diversity. If the trend continues, the number of Queensland women judicial officers will decline alarmingly as, shall we say, we more *experienced* women judicial officers continue on the path to retirement. This decline in female judicial appointments is not

³ *Attorney-General (Queensland) v Lawrence* [2013] QCA 364.

because of any dearth of talented, experienced and in every way meritorious women candidates. There were many women suitable for appointment to almost all of these roles. Then why only six per cent? Could it be because of an unconscious bias by those recommending and making the appointments so that well-qualified women candidates are invisible to them and not considered?

Justice Ruth McColl from the New South Wales Court of Appeal, the first female president of the New South Wales Bar Association, recently expressed her concern about the scrapping of the judicial appointments process in Commonwealth courts,⁴ a process which appears to have greatly increased the number of female judges. She suggested that this may result in a less transparent appointments process and fewer Commonwealth women judges.⁵

The recent paucity of female judicial appointments in Queensland, despite the large talent pool of women candidates, suggests the time may be right to consider establishing a Queensland judicial appointments process which makes visible to the judge-makers these suitably qualified women candidates who apparently have been invisible over recent years.

And now the Bar. The Bar Association of Queensland's membership is 1,376, of whom 304 or about 22 per cent are women, slightly up from last year's 20.9 per cent. Of Queensland silks, nine or almost nine per cent are women, up from last year's five per cent. Four women Queen's Counsel were appointed during the year. They are Soraya Ryan QC, Catherine Carew QC, Rebecca Treston QC, and Helen Bowskill QC.

In the last financial year, the percentage of female counsel appearing in the Queensland Court of Appeal was 14.7 per cent, a pleasing increase from 5.4 per cent in 2005-2006, but still significantly below the percentage of women at the Bar.

The Law Council's 2004 Equal Opportunity Briefing Policy was re-badged in 2009 as the Equitable Briefing Policy. It is not affirmative action but a measure designed to make visible suitable women barristers who have been invisible to those making briefing decisions. It requires consideration of whether a woman barrister is the best person to brief; keeping statistics as to the number of women briefed; and annually reviewing those figures. Many Queensland solicitors' firms have adopted the policy, but I have

⁴ Other than the High Court of Australia.

⁵ The Honourable Justice Ruth McColl AO, 'Celebrating Women in the Judiciary 2014' (Address to New South Wales Women Lawyers, Union, University and Schools Club, 27 February 2014).

been unable to access the annual reviews. It may be responsible for the gradual improvement in the statistics to which I have referred, but progress is glacial.

The continued under-representation of women at the Queensland Bar, from where the bulk of senior judicial officers come, is not just a women's issue. It diminishes the whole Bar, the legal profession and the broader community.

So much has been recognised by the New South Wales Bar Association with its:

- adoption of the Equitable Briefing Policy;
- Women Barristers Forum;
- effective mentoring program in which senior women barristers mentor women in their second and third years at the Bar;
- in-home child care scheme providing emergency back-up child care within one hour; and
- liaison with law schools, introducing women law students to women barristers.

For some years, the Victorian Bar Council, with the encouragement of Victoria's Chief Justice, Marilyn Warren AC, has been a leader in gender equality practices. In November last year, under the stewardship of Bar President, Fiona McLeod SC, it adopted the Quantum Leap program, which:

- measures numbers of women at the Bar and their comparative earnings by seniority and area of practice;
- encourages silks to pledge to promote equality and diversity;
- promotes bias-awareness training across the Bar;
- provides formal and informal mechanisms for reporting bullying, harassment and discrimination;
- establishes a mentoring program for women barristers at key career milestones of two and seven years, and to senior junior women;
- organises re-engagement round tables to support women barristers on career breaks; and
- undertakes exit surveys of women leaving the Bar to identify the drivers of attrition and factors assisting in retaining women barristers.

Earlier this month, the Law Council released its National Report on attrition and re-engagement which encompasses strategies targeted at cohorts including former, current and aspiring barristers.⁶

⁶ Law Council of Australia, 'National Attrition and Re-engagement Study (NARS) Report', 14 March 2014.

Closer to home, the Bar Association of Queensland is also concerned about the low proportion of women members. As long ago as 2004, it adopted the Equal Opportunity Briefing Policy. But while this is strong, moral leadership, Bar Associations do not hand out briefs. More needs to be and can be done. The four women on the Bar Council (Liz Wilson QC; Jacoba Brasch, Ruth O'Gorman and CEO, Robyn Martin), together with President Peter Davis QC and Vice-President Shane Doyle QC, are meeting with me next week. They are committed to developing policies to address the issue. When we meet next year, I hope we will be marvelling at the successful outcomes from this process.

I conclude on an even more positive note, at least for the moment. The Commonwealth Attorney-General's Department in its annual report publishes statistics concerning the briefing of counsel. In the last financial year, it briefed 73 women barristers, 41.48 per cent of all barristers briefed. The value of the briefs to female barristers was almost \$1.45 million, quite a bit more than the \$1.23 million in briefs to male barristers. I will be watching this table and reporting back next year!