

100th anniversary of the admission of Agnes McWhinney
Banco Court
Monday, 7 December 2015, 5.30pm

**The Hon Catherine Holmes
Chief Justice**

Colleagues and friends

We are here tonight to celebrate the centenary of Agnes McWhinney's admission as a solicitor in Queensland, and we have the great pleasure of having two of her grandchildren with us, Jane Perry and Ross Landsberg. As well as talking about that significant event, I have been asked to review some of the firsts for women in the legal profession in Queensland, which I will enjoy doing, because mostly they're not that long ago, and I remember them well.

First, something by way of background. Queensland was the third State to permit women to be admitted when The *Legal Practitioners Act* was enacted in 1905. There had been some resistance in other states. In Western Australia, for example, although the *Legal Practitioners Act* 1893 had used the neutral term "persons" of those allowed to be admitted, the Full Court in *Re Edith Haynes* (1904) 6 WAR 209 held that it did not include women: if the legislature had intended the expression to extend to women, they would have said so. Oddly though, David Malcolm has pointed out,¹ the same word used in the *Medical Act* was consistently interpreted as including a female.

In Tasmania, the Law Society had petitioned parliament against the passing of legislation permitting the admission of women on the grounds that it would be to the "great prejudice of the young men of this State". I am indebted to that splendid work, "A Woman's Place",² for a Victorian perspective by way of some excerpts from the Law Students' Society Journal, "The Summons". A writer in that journal, writing in 1892 of the prospect of women practitioners, said this:

¹ Centenary of *Re Edith Haynes* (1904) 6 WAR 209 The Hon the Chief Justice David K Malcolm AC. Speech delivered Monday, 9 August 2004.

² Eds S. Purdon and A. Rahemtula, Supreme Court of Queensland Library 2005.



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“The first alarming feature of the innovation would be the substitution of emotion for pure reason as the ground for all legal argument. A male counsel’s erudition would not be able to compete with the smiles and tears of a woman barrister in attracting the sympathies of the jury”.

Another writer in 1895 imagines a woman on the bench a century on, in 1995, which as we know was accurate enough, but, hilariously, he conjured an image of a lady who would also serve as a fashion correspondent and would be so taken up with criticising the dress of those around her that counsels’ arguments would be entirely lost on her.

New South Wales was particularly laggard. In 1898, Ada Evans enrolled at the Sydney University Law School. When the Dean of the Law School, who had been overseas, learned of her enrolment, he summoned her to his office and informed her that she did not have the physique for law. Nonetheless she graduated in 1902, but she was not admitted until 1921 because New South Wales did not pass legislation permitting the admission of women until 1918, and she had to be enrolled as a student at law for two years before she could be admitted.

When the *Legal Practitioners Bill* 1905 reached the Queensland parliament, no one actually spoke against its passage, but a member of the Legislative Council did complain that it was an insult to the sex to require women to wear a horsehair wig, given that a woman’s crowning glory was her hair. Notwithstanding the wig issue, the *Legal Practitioners Act* was duly enacted in Queensland as “an Act to confer on women the right of practising as barristers, solicitors or conveyancers”.

As has always been the case to some extent in the law, whom you knew mattered. Agnes McWhinney had a connection to the Townsville firm of Hobbs Wilson and Ryan, later Wilson Ryan and Grose, through her brother who was a solicitor there. She commenced her articles in 1910, and was admitted as a solicitor in 1915. The Brisbane Telegraph made the important points about the admission: she wore a white lingerie frock, which clearly was a different thing from what you’d think, and a white ribbon hat encircled with small French flowers. Agnes effectively got her brother’s job, because he was serving overseas during World War 1; her salary was paid to him. Although she started by



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aspiring to go to the Bar, she worked as a solicitor until 1919 when her brother returned from the war, and the following year she married, and that was the end of her legal career. The firm did not employ another female articled clerk until 1971. But in a pleasing symmetry, Michelle Morton, managing partner of Wilson Ryan and Grose won the Queensland Law Society's Agnes McWhinney award for professional and community contribution from a woman solicitor this year, 100 years after Agnes was admitted.

A Sunday Mail article for January 1936, in the "Woman's Realm" part of the paper, examines the careers of women barristers and solicitors in Queensland. The article is headed "Following in Dad's Footsteps"; not unreasonably, because the women whose careers it examined had tended, as Agnes McWhinney did, to make their way into the profession through the good offices of male relatives. In 1926, Katharine McGregor became the first woman in the State to be admitted as a barrister, being described by a newspaper report as a "good looking girl without the dowdiness and plainness associated with a blue stocking's career". This is very charming and gracious: Agnes McWhinney, now Mrs Osborne, was there to congratulate her on her admission. Katherine did not in fact practise as a barrister; instead she joined her father's firm and practised as a solicitor, becoming a partner in it and later setting up on her own account when the firm was dissolved.

The article mentions Elizabeth Hart, admitted as a solicitor in 1929, similarly obtained her employment through her father's firm, Flower and Hart. She was a stayer; a partner in the firm for 34 years and a senior partner for 21 years. In an interesting turn of the wheel, she gave Naida Haxton articles in 1963, although that did end a little bitterly when after finishing her articles, Naida decided to go to the bar in 1966, instead of staying with the firm. She was the first woman to enter private practice at the Bar in Queensland.

In 1929, Elizabeth Nimmo who had worked in the Public Curator's office, was admitted as a barrister, but promptly married, as did Clare Macrossan, who had served as Associate to her father; meeting her future husband on circuit, she gave up the idea of a career at the Bar. The article did not mention, but could have, Claire Pender, later Foley, who



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undertook articles with her brother finishing them in 1933 before they together set up Pender and Pender.

Una Bick in 1938 became the first person of either sex to graduate with a Bachelor of Laws degree in Queensland, but she was unable to obtain articles. She was admitted to the Bar that year. Unable to find work she got a job starting the Law Library at the university. Like Agnes McWhinney, her chance came when men went away to war. She joined the Commonwealth Crown Solicitor's Office as a clerk in 1942 and became a legal officer in 1943, as the first woman lawyer the Department had employed. She was the first woman to appear as a lawyer in the then Court of Petty Sessions, and the first to appear as a Commonwealth prosecutor. Because there was no pay scale for female legal officers, she was paid at the lowest level, the equivalent of a typist's wages.

Una Bick married in 1946 and became Una Prentice. She resigned from Commonwealth Public Service and worked as a solicitor in private practice until she had a son. Had she not already done so, she would have been obliged to resign; the bar on the employment of married women in the Commonwealth Public Service was not lifted until 1966. Una Bick's experience seems enlightened compared with the Queensland Public Service, which did not start employing women lawyers until the mid-1970s. There were clerks employed in the Magistrates Court and Mary Foley, later Finn, was a law clerk in the Crown Law Office. In 1969, the State Public Service regulations were amended to enable women to stay in the public service after marriage, although I can tell you from personal experience there was no enthusiasm for employing married women even then. Still, there is probably a correlation between the availability of public service positions and the increase in admissions of women from the end of the 1960s.

Until 1969, only 30 women had been admitted to practice in Queensland. Naida Haxton was on her own at the Bar, but five years after her admission in 1966, she had married and moved to Sydney, joining the New South Wales Bar. Over the 1970s, 119 women were admitted as solicitors and 46 as barristers, and many of them took up public service positions. Elizabeth Hall, now a Magistrate, was appointed to the Solicitor General's office as a legal officer in 1976, the same year as Barbara Newton and Margaret McMurdo



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began work in the Public Defender's Office. According to "A Woman's Place", Cheryl Redel, was appointed a legal officer in the Parliamentary Counsel's Office in 1977, but was initially prevented from going into the advisors' box, because the Clerks of the Parliament had to be convinced that it was appropriate to the proceedings.

In the 1970s there were some women associates, generally Judges' daughters, but their role could be circumscribed. Catherine Douglas, for example, has told me that she was made to swap with a male associate any time there was any expectation of any salacious material emerging during a trial, and there was no question of her being in the court when her father presided in a rape.

During the 1980s things began to accelerate. In that decade 735 women were admitted as solicitors and 120 as barristers. I figure in both numbers. When I started practice in 1982, the landscape for women was pretty bare, and I really would not have credited the developments that took place in the next two decades. The number of firsts really took off. In 1986, Elizabeth Nosworthy became the first woman president of the Queensland Law Society. In the same year, Jacqui Payne, a Butjulla woman, was the first indigenous person to be admitted as a solicitor. The following year Mary Gaudron was appointed as the first woman judge of the High Court and very importantly for Queensland, Susan Kiefel was the first woman to take silk in this State, the first of her series of firsts, and Barbara Newton was the first woman appointed as Public Defender in Queensland. In 1989, Cathy Pirie was admitted as a solicitor, the first Torres Strait Islander to be admitted. Both she and Jacqui Payne later became magistrates.

The 1990s was when appointments of women to judicial positions finally got under way in Queensland. In 1990 Grace Kruger was appointed as a magistrate and in 1991, Margaret McMurdo became the first woman judge appointed to the District Court. In 1992, Margaret White was appointed to the Supreme Court of Queensland as a Master. In 1993, Susan Kiefel was appointed as the first woman judge of the Supreme Court and Michelle May was the first woman appointed to the Family Court bench in Brisbane. In 1998, we got our first woman head of jurisdiction, Margaret McMurdo as President of the Court of Appeal.



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She was and is a magnificent role model, not just for women in the law but for any head of jurisdiction of either gender.

There were more significant appointments as heads of jurisdiction the following year, with Diane Fingleton as first woman Chief Magistrate and Patsy Wolfe as first Chief Judge of the District Court. There's another major achievement for women during the 1990's: in 1992 Leneen Forde, the Founding President of WLAQ and an inspiration to all of us in the way she single-handedly brought up five children while working as a partner in Cannan and Peterson, was, to our great delight, appointed as the first female Governor.

At the beginning of the next decade, in 2000, Leanne Clare became the first woman Director of Public Prosecutions. Over the decade more women were appointed to the Supreme Court, including Ann Lyons, our first solicitor judge, with a smaller number joining the District Court, and in 2007 Susan Kiefel became the first Queensland woman appointed to the High Court. Somewhere in the 2000s, the Court of Appeal sat its first all-woman bench of Margaret McMurdo, Margaret White and me. No one knows the date because it felt so normal, that it really didn't seem worth making a fuss about.

The pace has not really kept up. The number of women as law graduates has increased beyond half and 47% of the full members of the Queensland Law Society are women. Across the country, though, only about 20% of law firm partners are women. Women represent about 22% of the Queensland Bar. The number of women on the bench has plateaued, I think it is fair to say.

But I want to finish on an up-note. 2015. There was a particularly important first, quite recently, one which I think holds great promise for the future. This was a very significant milestone for women, with the filling of a position I had doubted a woman would ever hold. I'm sure I'm not the only one to see it as a great achievement. Of course, I'm referring to Sue Brown's election as vice-president of the Bar Council. We can dare to dream that one day a woman will be President of the Bar in Queensland, perhaps as soon as only 30 years after the Law Society had Elizabeth Nosworthy as first woman president. Then the



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ultimate male bastion will be stormed. I think Agnes McWhinney, who did dream of going to the Bar, would have liked that.