

## **“The Latest Report Card on Gender Equality at the Queensland Bar and Bench”**

**The Honourable Justice Margaret McMurdo AC\***

### **Queensland Women Judicial Officers and Barristers, 23 June 2016**

Your Honours, Vice-President of the Queensland Bar, Sue Brown QC, the first woman to hold that role, women of the Queensland Bar, especially Rebecca Treston QC, Kate Heyworth-Smith QC, Caite Brewer and Florence Chen, who have borne the brunt of organising this delightful function.

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. I also acknowledge the traditional owners on the south side of the Brisbane River, the Jagera people. They prospered here for tens of thousands of years before European contact, with women elders sharing knowledge with younger clanswomen over bush tucker and laughter. I acknowledge their elders past and present as we continue that ancient tradition tonight.

Since we met last year, the following 16 women have been admitted to the Bar:

- Jennifer Hewson
- Kylie Chesterman
- Serena Nicholls
- Ann Lehman
- Dr Cathryn McConaghey
- Angela Rae
- Borcsa Vass
- Polina Kinchina
- Susanne Smales
- Emma Hoiberg
- Claire Schneider
- Julia O’Connor
- Kate Blackford-Slack
- Kristi Riedel
- Sian McGee
- Merissa Martinez

Could those present come forward and introduce themselves. Please join me in warmly welcoming them to the Queensland Bar and wishing them long, fulfilling and successful careers.

As for new women judicial officers, it has been an exciting year with the appointment of Queensland’s first woman Chief Justice, Kate Holmes. That has to be worth a round of applause.

Justice Catherine Carew has been appointed to the Family Court.

And magistrates Melanie Ho, Belinda Merrin, Kay Philipson, Louisa Pink and Nerida Wilson have been appointed to the Magistrates Court.

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\* I gratefully acknowledge the research and editing assistance of my associate, Marryum Kahloon LLB (Hons), and my Executive Assistant, Kelly Morseu, for her typing and editing assistance.

Could those present come forward? Please join me in congratulating each of them and wishing their Honours a successful and satisfying judicial career.

Some advice to the new judicial officers that at least half this audience will appreciate. When I was first appointed a judge and Phil was still a barrister, he would often leave me in the morning with the words: “Be nice to the barristers!”

And I am delighted to recognise the appointment on 19 November 2015 of Ms Madeline Brennan QC, the only Queensland women silk appointed during this year.

Please join me in congratulating Madeline and wishing her well in this next stage of her career.

All that happy news is tempered by some sad tidings. The Queensland judiciary has or is about to lose two valued members. Magistrate Wendy Cull retired on 6 February 2016, having energetically served the people of Queensland in many locations throughout the State from 2002. She has been a wise mentor to women in the law and an enthusiastic participant in the Australian Women Judges’ Association, regularly attending meetings of the International Women Judges’ Association. Wendy has also been a prolific bridge builder between the Magistrates Courts and our Indigenous communities. She will be greatly missed.

Judge Sarah Bradley retires next week from the District Court of Queensland after 17 years. Judge Bradley has had a distinguished career and has made a mighty contribution to the criminal justice system, first as a prosecutor, next as a solicitor, then as a magistrate and ultimately as a judge, not only in Brisbane, but throughout this vast State. She was the first woman solicitor and the first Magistrate appointed to the District Court. Like Wendy, Sarah, too has been a magnificent mentor for women lawyers and has been at the forefront of building bridges between the courts and Indigenous communities. Sarah has additionally given years of exemplary service as President of the Australian Association of Women Judges and, like Wendy, has often represented Australia at conferences of the International Women Judges’ Association. Sarah has courageously fulfilled her judicial duties, often in the face of unjustified and sometimes vicious media attacks. She has been a great role model to women law students and lawyers and will be a real loss to the Queensland justice system.

Please join me in thanking Sarah and Wendy for their stellar service to Queensland and in wishing them a long, healthy and contented retirement.

Statistics time.

As to Queensland-based judges in the Commonwealth jurisdiction, an impressive 14 per cent of Federal Court judges (1 of 7) are women; 50 per cent of Family Court judges (3 of 6) are women; and 45 per cent of Federal Circuit Court judges (5 of 11) are women.

In the Queensland jurisdiction, 26 per cent of Supreme Court judges (7 of 27) are women. In the District Court 22 per cent (9 of 41) are women. And in the Magistrates Court 38 per cent (35 of 92) are women: comparable to 2014 when just under 30 per cent of Queensland Supreme Court judges, 20.5 per cent of District Court judges and 34 per cent of magistrates were women.

On the whole, these figures warrant the report card note: “Satisfactory but room for improvement.”

The representation of women in the judiciary is, generally speaking, better than at the Bar. Employed women barristers and those women barristers who practice privately comprise 22 per cent of members of the Queensland Bar (241 of 1106). When female barristers in private

practice are considered alone, this falls to 19 per cent (185 of 957). Interestingly, when employed barristers are considered alone, the percentage of women barristers rises to 38 per cent (56 of 149). Only 9 per cent of silks at the Queensland Bar are women (10 of 115).

Encouragingly, 24 per cent of the members of the Queensland Bar Council are women (4 of 17). They are Vice-President Sue Brown QC, Jacoba Brasch QC (Honorary Treasurer), Rebecca Treston QC and Florence Chen. Please join me in warmly acknowledging their leadership.

In an article in the Sydney Morning Herald on 9 June, Jessica Irvine wrote that, according to an analysis of 2013-14 raw figures prepared by Ben Phillips, a Principal Research Fellow at the Australian National University's Centre for Social Research and Methods, men earn more than women in all but 14 lowly paid occupations. The average taxable income, after deductions, for men is \$75,500 whereas for women it is \$48,900, giving a raw gap of 38 per cent. As many women work part-time, adjusting for the hours gap, using Census data, reduces the raw wage gap to 19 per cent.

But it is in the occupation of barristers where the biggest gender pay gap is seen. The average male barrister - who puts in a tax return - declares a taxable annual income of \$169,000, whereas the average female barrister earns \$60,000, a gender pay gap of 184 per cent. As Ms Irvine states, take a male barrister's taxable income, then halve it, then almost halve it again! And adjusting for the fact that male barristers work on average 44 hours a week compared to 37 hours for female barristers (and I am sure there are plenty here who would be very grateful to only be working 44 hours a week) the pay gap shrinks to 141 per cent. Even so, it remains the biggest pay gap of all occupations. Ms Irvine concludes her article with: "Make no mistake: sexism is alive and well in our most respected and trusted professions."

The low numbers of women at the Queensland Bar, particularly women silks, and the gender pay gap amongst barristers, suggest to me that there is much in favour of the Revised Draft National Model Equitable Briefing Policy, perhaps with briefing targets limited to the percentage of women at the private Bar in Queensland, currently 19 per cent. This could be revised upwards as that percentage increases. I hope that all members of the Queensland Bar, men and women, apprehend that low numbers of women membership and the stark gender pay gap amongst barristers seriously risks undermining the confidence of the remainder of the legal profession and the broader community in the Queensland Bar. Creating an environment at the Queensland Bar where women barristers feel welcome and valued and apprehend they will succeed is not about taking briefs away from men barristers. It is about ensuring the Queensland Bar, an essential democratic institution ensuring access to the rule of law through an independent judiciary, is not moribund, arcane or an amusing anachronism but rather a place of light, learning, and leadership. When women practice successfully at the Queensland Bar, and for approximately equal remuneration, in approximately equal numbers the Bar as an institution and its members, both male and female, will be enriched, as will the Queensland justice system and community which the Bar serves.

I will finish as I started, on a positive note. In the last financial year, the percentage of female counsel appearing in matters in the Queensland Court of Appeal, increased from 11.85 per cent in the previous year to 15 per cent. And the percentage of women barristers appearing in our recent Townsville Sittings was even higher at 16.7 per cent, although still a little less than the relevant 22 per cent figure. I like to think that keeping these statistics, and reporting on them, is useful in bringing about the positive change, like a pocket-version of aspects of the Law Council of Australia's Revised Draft National Model Equitable Briefing Policy.

And things have also greatly improved, since we last met, in the briefing practices in the Department of the Commonwealth Attorney-General. In the most recent financial year, the Department briefed 73 female counsel, 47 per cent of all barristers briefed, pretty much at the magical half way point. This is more than double the 31 female counsel (29 per cent of all barristers) briefed in the previous financial year. The total value of all briefs to female barristers this year was just over \$2.5 million, compared to briefs to male barristers totalling \$4.4 million. Whilst there is still some way to go in terms of equity, this is a vast improvement on the previous financial year where female barristers secured \$1.5 million in briefs compared to \$3.5 million in briefs to male barristers.

In the spirit of cordiality and celebration, I ask the women judicial officers present to raise their glasses to our hosts, whom we thank for their hard work and diligence on behalf of their clients, their service to the legal profession and their assistance to the courts and the administration of justice. Your Honours – Queensland’s women barristers.