

**TASMANIAN UNIVERSITY LAW SOCIETY
WOMEN IN LAW BREAKFAST
BY HER EXCELLENCY
PROFESSOR THE HONOURABLE KATE WARNER AC
GOVERNOR OF TASMANIA
OLD WOOLSTORE APARTMENT HOTEL
TUESDAY 2ND OCTOBER 2018**

Thank you for inviting me to speak at your breakfast.

I begin by paying my respects to the traditional and original owners of this land—the Mouheneener people. I acknowledge the contemporary Tasmanian Aboriginal community, who have survived invasion and dispossession, and continue to maintain their identity, culture and Indigenous rights.

Bridget has suggested that I talk to you about the role of women in the legal profession and the contribution that women have made since I embarked on a legal career; any struggles or obstacles I encountered; advice to women starting in the profession about how to avoid those obstacles and my thoughts and hopes for women in the profession into the future.

There have been dramatic changes in women's participation in the legal profession since the days I embarked on a legal career and this reflects changes in women's employment in general. In 1970 when I graduated, there was I think, just one female judge in Australia, Roma Mitchell, who was a judge of the Supreme Court of South Australia. In that year, 1970, the first female magistrate was appointed in New South Wales. It was not until 1987 that the first female was appointed to the High Court (Mary Gaudron), nor was it until 1990 that a female was appointed to the Federal Court (Deidre O'Connor). In Tasmania, it took us until 2005 to appoint a woman to the Supreme Court (Shan Tennent), until 2008 to appoint a woman (Barbara Baker) as a Federal Court Magistrate, until 2010 to appoint our first woman QC or SC (Tamara Jago) and until 2016 to appoint our first female Chief Magistrate (Catherine Geason) and in 2017 our first female High Court Chief Justice (Susan Kiefel).

Progress has been made but there is still a gender gap. The increase in numbers of women in the law has had an impact on the content of the law, by looking at the law from a woman's perspective and highlighting discriminatory laws and practices including in the workplace. And they have served as role models to young women.

In the High Court, in 2018 43% of the judges are female, and the proportion of judges in the Federal Circuit Court is similar. But in other courts the gap is wider at 24% in State Supreme and Courts of Appeal and 25% in the Federal Court.¹ Moreover, it seems that at the Bar only 8% of practising silks are females² and it has been reported that they are half as likely to be partners as males.³

Gender workplace statistics tell us that in the workplace as a whole, full-time average weekly ordinary earnings for women are, on average, 14.6% less than for men.⁴ Women are less likely to be full-time employees (37% of full-time employees), more likely to be part-time (69.2%).⁵ And average superannuation balances for women at retirement (aged 60-64) are a startling 42% less than for men.⁶ And the gender pay gap is worse in the legal profession, with reports of it being up to 35%.⁷

Female law graduates now outnumber males and the Law Council of Australia reports that has found that 51% of solicitors are female.⁸

Why is it that there are so many women law graduates, so many solicitors but so few female partners in legal firms, so few silks, so few judges?

What happens is that women evaporate from the legal profession post-admission or at least pull back from full-time work and their career prospects suffer. The Law Council's attrition study found that 50% of part-time women with family responsibilities reported discrimination compared with 19% of full-time women employees with family responsibilities. Whilst a study of 66 organisations by the Workplace Gender Equality Agency between 2013 and 2014 showed that law firms offered greater flexibility than industry in general, it has been reported that some firms actively dissuade lawyers from taking up these options by reserving interesting or challenging projects for full-time employees.⁹

¹ Australian Bureau of Statistics, *Gender Indicators, Australia, 2018*, Catalogue No 4125.0.

² Justin Whealing, 'Report highlights inequality at Bar' *Lawyers Weekly*, 6 September 2012.

³ National Attrition and Re-engagement Study, 2012.

⁴ Australian Government, Workplace Gender Equality Agency, *Gender workplace statistics at a glance*, August 2018, viewed 29 September 2018.

⁵ Australian Government, n 2.

⁶ Australian Government, n 2.

⁷ As reported by Elena Tsalanidis, 'Gender pay gap – working towards equality' *Victorian Women Lawyers*, 2017, 2; however, another report had it at 15.5% for full-timers and 22.8% of part-timers: *Victorian Women Lawyers, Addressing the Gender Pay Gap in the Legal Sector*, 2016.

⁸ Law Council of Australia, *Women outnumber men in the legal profession for the first time – but not in senior ranks*, 19 July 2017, citing the 2016 National Profile:

<https://www.lawcouncil.asn.au/media/news/women-outnumber-men-in-the-legal-profession-for-the-first-time-but-not-in-senior-ranks>, accessed 29 September 2018

⁹ Leanne Mezrani, 'Lawyers challenge inflexible firms', *Lawyers Weekly*, 23 March 2015.

And resistance to encouraging flexible work practices is said to stem from a concern that clients prefer to work with lawyers who do not have commitments that limit their availability.

So many women opt out of the law profession, leave the higher paying jobs, do not aspire to a partnership. To some extent this is a matter of choice, but it is a constrained choice. Pregnancy and caring roles significantly reduce women's ability to earn comparative salaries. Having children means that three quarters of working mothers (in general, not just in law) take the opportunity to change their working lives in some way: to work part-time, negotiate flexible working hours, work at home, or undertake shift work of some kind.¹⁰ But only a third of working fathers (with children under age 11 or under) change their working patterns in any way at all. In fact, on average fathers slightly increase their working hours by 4 hours a week with the birth of their first child.

What are my hopes for the legal profession in the future?

I would like to see the gender gap disappear. This will take a cultural change in the legal profession and in society in general so that it is not viewed as the norm for women to be the primary carer of children and for flexible work practices to be seen as normal. Employers need to encourage men to take parental leave and to engage in the care of children; they need to accommodate flexible work arrangements including working at home and the profession needs to embrace the Law Council of Australia's efforts to boost the number of women in leadership positions by, for example, completing the Council's unconscious bias training programs and gender equitable briefing guidelines.

The contribution women have made to the legal profession is enormous. But while we have a gender gap which sees a disproportionate low number of women in the senior ranks of the profession, we are wasting a valuable resource and denying women equal access to those roles.

And it is not just for the sake of equity in employment opportunities that we need to reduce the gender gap, I think it is clear that rigid gender stereotypes and norms are at the root of problems such as gender violence.

Based on my experience, what is my advice to individuals starting out in their careers?

If you want to have children, or if you have other family responsibilities, get a wife! In other words, someone who will take primary responsibility for the children.

¹⁰ Annabel Crabb, *The Wife Drought*, 2014, 55.

Alternatively, choose a workplace that has and encourages flexible work arrangements including working at home and a partner who is willing to take equal responsibility for caring for your children and for household chores.

If children are not on the agenda, then still choose a workplace that has and encourages flexible work arrangements including working at home because such a workplace is more likely to have a culture of trust and equality. Choose a workplace that has a good reputation for nurturing female staff.

Consider an academic career. I have had a most stimulating and rewarding career and benefited enormously by having a workplace that offers flexibility and a lot of encouragement. It is a career that has given me amazing opportunities.

Thank you.