

SPEECH OF CHIEF JUSTICE MARILYN WARREN, AC

TO

THE VICTORIAN WOMEN LAWYERS

10TH ANNIVERSARY LUNCHEON

The Changing Landscape of the Law

“Unclaimed and Unfinished Business”

Good afternoon

It used to be said that all you need to do to fix inequality is ‘just add woman and stir’¹.

Today’s event gives us an opportunity to celebrate the outstanding successes of Victorian Women Lawyers over the past decade. It also provides a timely opportunity to look at what has happened when we have ‘added woman’ to the legal

¹ Charlotte Bunch in Tuncer, B and Kocaturk, T ‘You Can’t Just Add Women, and Stir’ *Delta* Jaargang 37 Nr 17

profession and what we need to do to keep her there.

This afternoon I would like to do 3 things:

Firstly, congratulations are in order. The Victorian Women Lawyers has been an outstanding success in the way it has progressed women's profile in the law. I can say without doubt that it has accomplished a highly respected standing as an authoritative resource on issues facing women lawyers in this State.

Secondly, I want to spend some time looking at the VWL's findings to see what exactly is getting in the way of women lawyers staying in the job.

Lastly, I want to comment on the changing face of the legal profession and how I think women lawyers will shape its landscape in the future.

Changing gender divisive social beliefs in the work place can be achieved in two ways:

- by the persistent energies of the insistent few; and by,
- harnessing the *critical mass*² of people who share common views.

The VWL began with the insistent voices of a small group of women.

Now its membership has a critical mass of 600 women lawyers.

² The term 'critical mass' was coined by Barbara Babcock, Ernest W McFarland Professor of Law, cited in the article by Elaine Ray "No Throwing in the Towel for Women in the Legal Profession" in Stanford University News Service (415) 723-2558 at <http://www.stanford.edu.dept/news/pr/97/970415legal.html>.

These women are moving through the profession seeking something better than their predecessors.

This persuasive cohort of women lawyers is predominately aged between 20 and 40 years³, highly educated with a high level literacy in computer and telecommunication technologies - with clear views on how they want to move forward. These women have modems and they know how to use it!

When I look at some of the issues raised in studies by women lawyers of Generation X and Y, it is clear to me that their call for workplace flexibility and work life balance is the new agenda.

³ Based on membership numbers of the VWL at 2006.

It is this cohort of women lawyers that will have a persuasive impact on the profession as it moves forward.

The legal profession has undergone a substantial metamorphosis since the time I graduated from law school. There are more law schools, partnerships, firms and graduates⁴ entering the profession. There is more research, more discussion and more debate on what the profession can offer and how it should be practiced. There are clearer expectations from women lawyers on their career trajectory.

Women lawyers are seeking greater proximity to senior positions, partnerships and positions of authority.

⁴ 4,000 students graduate from law school in Australia every year.

In 2006, the profile of women lawyers and their lives looks something like this:

- 56% of women lawyers in Victoria are under 40 years. After the age of 40, the number of women practising law halves.⁵
- Women enter the profession at all ages. The life cycle of the woman lawyer does not start at 23 years. The numbers of women lawyers in our professional alumni is increasing across all age groups. Women lawyers see gender as a key issue impacting their professional life.
- The “reach” of women’s interest in legal specialisms goes past those where it is assumed they an “inherent gender interest” in the area.

⁵ Statistics from the Law Institute of Victorian cited in the report - *Bendable or Expendable Practices and Attitudes toward work flexibility in Victoria’s biggest legal employers*, 2006 Report – A joint project of the Law Institute of Victoria and Victorian Women Lawyers.

- Women lawyers are more likely to occupy senior positions if they work in government than if they were to work in the private sector.⁶
- Women lawyers occupy only 14% of partnerships in firms⁷. I was interested to see the Australian Financial Review Partnership Survey released in July, where just 22 per cent of the current intake of partners at the nations top law firms were held by women. ⁸
- In the main, the profession holds most of its female lawyers in the lower levels of the legal hierarchy.⁹

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⁸ Chris Merritt and Vanda Carson, "Fewer Women Lawyers being Tapped for the Top" in the *Australian Financial Review* 30 June 2006.

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- The profession is not attractive to women lawyers after 5-8 years of post admission practice - with women moving away from the profession after 11-15 years¹⁰.

Keeping the status quo does not appear viable, cost effective, nor a commercially sustainable option.

The brain drain of women lawyers - the loss of intellectual knowledge, professional competency and experience - has resource implications. This loss is costly to replace.

Why women lawyers are not staying in the profession is an unclaimed issue that belongs with employers, professional associations and the government.

¹⁰ Rosemary Hunter in *Women in the World's Legal Professions*, Ulrike Schultz and Gisela Shaw 2003 Hart Publishing Oxford- Portland Oregon

The VWL research in this area shows that no one single causative factor is significant, but many.

Its paper "*360 Degree Review: Flexible Work Practices, Confronting the Myths and Realities in the Legal Profession*" released in November 2005 is an outstanding piece of research.

It identifies a number of factors that negatively impact women lawyers' experience of the profession.

A linguistic and experiential fault line emerges in the commentaries of women and men when describing their careers in law.

Workplace flexibility clearly stands out as a major issue...still.

Whilst flexible work practices are promised, the manner in which they are applied differs¹¹.

Women lawyers who participated in the study felt that firms did not tell the clients of their flexible work policies.

Yet when looking at the client's expectations and perceptions of the employers, the findings clearly show that "clients were not opposed to or dislike per se working with a lawyer using flexible work practices"¹².

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¹² *A 360 Degree Review: Flexible Work Practices Confronting Myths and Realities in the Legal Profession*, publication by the Victorian Women Lawyers in association with the Victorian Law Foundation and Law Institute of Victoria, 2005 at page 7.

Of those lawyers who are working flexibly, only 63%¹³ feel that their manager has the sufficient skills to provide the real support. Clearly, policy in and of itself is insufficient.

The findings of the *360 Degree* research can be summed up in this way: there is an prevailing inertia that comes from hanging onto old attitudes – that is preventing employers from successfully and fully implementing flexible work place arrangements.

It is unsatisfactory that only 44% of lawyers using flexible work practice felt that it is possible to work flexibly and have career in their organisation¹⁴.

¹³ *A 360 Degree Review: Flexible Work Practices Confronting Myths and Realities in the Legal Profession*, publication by the Victorian Women Lawyers in association with the Victorian Law Foundation and Law Institute of Victoria, 2005 at page 6.

¹⁴ *A 360 Degree Review: Flexible Work Practices Confronting Myths and Realities in the Legal Profession*, publication by the Victorian Women Lawyers in association with the Victorian Law Foundation and Law Institute of Victoria, 2005 at page 7.

It is unsatisfactory that 67% of lawyers¹⁵ using flexible work practices are dissatisfied with the negative impact that working flexibly has on their career prospects.

The VWL followed up this study with a collaborative project with the Law Institute of Victoria released this year.

The report, *Bendable or Expendable*¹⁶ exposed a number of frailties that continue to impede the acceptance and integration of flexible work options.

I will say at the outset that family responsibilities remain the key imperative for women seeking flexible work options.

¹⁵ *A 360 Degree Review: Flexible Work Practices Confronting Myths and Realities in the Legal Profession*, publication by the Victorian Women Lawyers in association with the Victorian Law Foundation and Law Institute of Victoria, 2005 at page 7.

¹⁶ *Bendable or Expendable Practices and Attitudes toward work flexibility in Victoria's biggest legal employers*, 2006 Report – A joint project of the Law Institute of Victoria and Victorian Women Lawyers.

- Since the last study in 2001, three quarters of full time lawyers now work up to 9-10 hours a day¹⁷.
- Whilst there was an increase in non traditional work arrangements – there was a decline in the type of options for those returning from parental leave¹⁸.
- Fewer promotions were given to those in non traditional arrangements¹⁹.

It is of concern that 45% of lawyers participating in the study felt that flexible work arrangements were a “career limiting move”²⁰.

¹⁷ *Bendable or Expendable Practices and Attitudes toward work flexibility in Victoria's biggest legal employers*, 2006 Report – A joint project of the Law Institute of Victoria and Victorian Women Lawyers at page 9.

¹⁸ *Bendable or Expendable Practices and Attitudes toward work flexibility in Victoria's biggest legal employers*, 2006 Report – A joint project of the Law Institute of Victoria and Victorian Women Lawyers at page 9.

¹⁹ *Bendable or Expendable Practices and Attitudes toward work flexibility in Victoria's biggest legal employers*, 2006 Report – A joint project of the Law Institute of Victoria and Victorian Women Lawyers at page 9.

I note with interest that other recently published reports in major Australian newspapers indicate that law firms are setting salaries and budgets of these new options by applying old methodologies such as pro rata rates²¹.

Clearly a decade on there is some unfinished business and unclaimed issues for women in the law.

So what does this mean for women going forward in the profession?

It is my view, that the legal landscape will be impacted by the critical mass of young women

²⁰ *Bendable or Expendable Practices and Attitudes toward work flexibility in Victoria's biggest legal employers*, 2006 Report – A joint project of the Law Institute of Victoria and Victorian Women Lawyers at page 9.

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lawyers who are redefining the agenda and becoming a persuasive cohort for work place reform.

Women lawyers are moving towards making their own work environment and not accepting what's there already.

Women lawyers are establishing small specialist firms, consultancies as well as legal services with twenty two per cent of sole practitioners being run by women.²²

Women lawyers are demanding greater proximity to seniority, partnerships and positions of greater autonomy.

²² *Bendable or Expendable Practices and Attitudes toward work flexibility in Victoria's biggest legal employers*, 2006 Report – A joint project of the Law Institute of Victoria and Victorian Women Lawyers at page 9.

The profession's reliance on traditional work models are, and will be increasingly reviewed. Whilst there is a shift towards working greater hours in the office than previously, this trend is being counterbalanced by younger lawyers who don't accept the paradigm of "three square meals a day at the office".

Employer beliefs that they are only meeting their client expectations to have staff fully accessible and wholly available to them....is not a strong argument in the light of current research findings.

The VWL research shows that clients value other criterion, like affordability and the overall result²³.

²³ *A 360 Degree Review: Flexible Work Practices Confronting Myths and Realities in the Legal Profession*, publication by the Victorian Women Lawyers in association with the Victorian Law Foundation and Law Institute of Victoria, 2005 at page 7.

When I speak to young lawyers, it strikes me that achieving work life balance is a critical issue for generation X and Y.

Where previously, young lawyers would settle into a job with the one employer for the remainder of their career, generation X and Y have different ideas. This cohort holds expectations that the freedoms afforded by advances in computer and telecommunications technologies - will and CAN support alternative work practices - that includes allowing them to work from home.

I believe that these generations are more likely to give their career commitment selectively to those firms who are willing to support their construction on the timeline for professional development and promotion.

It is more likely that these generations will 'shop around' for a law firm or employer that does not require that they devote 10 hour days at the office 6 days a week to show loyalty, commitment and professionalism.

It is my view that these generations are better informed on how to maintain their emotional well being and mental health. These generations will make choices to preserve their life work balance.

The impetus for change is not only coming from employees. Employers are making slow incremental changes to the way they do business and how they attract and retain staff.

There is a subtle move away from viewing the partnership arrangement as the dominant and only model. Managers of legal services are re evaluating the value of the partnership model and whether a “one size fits all”²⁴ approach can do the job.

When I look at the past decade for women in the law, there still remains some unfinished business and some unclaimed issues.

There are unclaimed issues in relation to how we get affordable and accessible child care. Administrative supports need to be integrated with those who are taking up flexible work options. The view that loyalty equates to long hours in the office is no longer working nor is it reflective of the new models of work.

²⁴ Regina M Pisa “Not Quite Corporate: the New Law Firm Model” *Chief Legal Executive* Spring 2003

The policies may be well drafted but their implementation is incomplete.

The VWL still has much to do to advance and promote a paradigm shift in how business is done and how work is valued.

Of course all of this shall take time but my experience of the VWL is that it will maintain its research, the debate and the discussion.

Before I conclude today, I want to offer you an example of what is being done by government to offer flexible, family friendly workplace policies.

I am not sure if any of you have noticed recently, but the Federal Government has revamped their advertising and promotion of legal positions.

For those of you who haven't had the time to read these new position description forms – let me bring you up to speed. The federal government has on its website, information on vacancies and job descriptions. As usual, there are forms to download and information packages for applicants.

In addition to listing the qualifications required, the specific duties and an overview of the corporate direction, the information packages and forms now depict family friendly policies where the typical life of an employee is outlined in full. I shall read an excerpt of the new position description that details the typical life in the day of our hypothetical friend Fraser, a EL2 Principal Legal Officer with a federal government department.

It starts with “ HE arrived at work at 8.45am after dropping his children off at school and day care”²⁵....Without reading all of the half page passage, I can confidently say that the subject of this vignette was able to enjoy an interesting and diverse range of tasks consulting with colleagues and clients throughout the day - “*where he decided to take a short stroll to the mall to enjoy a light lunch with colleagues and friends from neighbouring Commonwealth agencies*”.

The ending is important - “*Fraser broke from the meeting at around 4.15pm, and began to work on a review of a tender. He decided to end his day by finalising his work plan for the rest of the financial year, and prioritised his work deadlines for the next day*”. Although the form didn’t specifically detail

²⁵ Position description form for Executive Level 2/ Principal Legal Officer of the Department of Immigration and Multicultural Affairs.

whether Fraser picked up his children...I get the sense that his routine allowed some degree of flexibility.

I will let you all sit with this image and decide how your working day compares to Fraser's.

PAUSE

Happy Birthday VWL and thank you for your efforts in showing that women in the law should be awarded, rewarded and applauded for their contribution.

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