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Women in the Legal Profession in Australia A Research Start

Terry Hutchinson¹

‘Agnes broke through but the ceiling was quickly repaired and lowered.’²

Introduction

It's a conundrum.³ Why haven't women progressed in the upper echelons of the legal profession relative to the numbers graduating from law schools? There have been several reports into the issue of Women in the Legal Profession in Australia in the last ten years. This paper does not aim to answer the larger question. Rather it draws together a cameo of the published writing on this area as a basis for further research.

This is the first tentative step in a larger undertaking – a bibliography of Australian feminist literature on law modelled on *The Canadian Feminist Literature on Law: An Annotated Bibliography 1988-1998* which was compiled by Josée Bouchard, Susan B. Boyd and Elizabeth Sheehy and published by the University of Toronto Press in 1999.⁴ That bibliography summarises, organises and locates the vast array of Canadian feminist legal literature under a range of topics including Aboriginal Women, the Constitution, Criminal Law, Family Law, Health, Human Rights, Immigrant and Refugee Women, International Law, Intersecting Oppressions, Legal Education, Legal History, Legal Profession, Reproduction, Sports, Taxation, Theory and Work. No such research resource exists for Australia. This paper presents a beginning of the larger project concentrating on one area that is pivotal to entrenching women's legal rights in Australia – women's participation in the legal profession.

1995 as a Starting Point

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² McMurdo, M 'The Glass Ceiling Exists Only in Women's Minds' *Challenges to Women in the New Millennium*, Conference hosted by the Consulate-General of Japan, Parliament House, 1999.

³ Thornton M, 'Authority and Corporeality: The Conundrum for Women in Law' (1998) 6 (2) *Feminist Legal Studies* 147-170.

⁴ Other published bibliographies include: F.C. DeCoste, K.M. Munro, Lillian MacPherson, *Feminist legal literature: a selective annotated bibliography*. (New York : Garland Pub., 1991).; Doughan, David and Denise Sanchez. *Feminist periodicals, 1855-1984 : an annotated critical bibliography of British, Irish, Commonwealth and international titles* (Brighton : Harvester, 1987).; Feinberg, Renee *The Equal Rights Amendment : an annotated bibliography of the issues, 1976-1985* (New York : Greenwood Press, 1986).; Humm, Maggie *An annotated critical bibliography of feminist criticism* (Boston, Mass. : G.K. Hall, 1987).; Stanek, Edward *Legal status and rights of women : a selected bibliography* (Monticello, Ill., USA : Vance Bibliographies, 1987).; Taylor, Betty W., Sharon Rush, Robert J. Munro *Feminist jurisprudence, women and the law : critical essays, research agenda, and bibliography* (Littleton, Colo.: F.B. Rothman, 1999).

The bibliography takes as its starting point Margaret Thornton's *Dissonance and Distrust: Women in the Legal Profession* which was published in 1995.⁵ It lists the published literature since that date – the reports, books and journal articles. In 1995, Thornton reported that women lawyers had not been 'fully accepted as citizens' of the legal profession.⁶ Thornton referred to women as 'fringe dwellers of the jurisprudential community'.⁷ She noted that 'neither an increase in the number of women nor the passing of time can provide an automatic remedy'.⁸ Has the situation changed in the last ten years?

This bibliography is organised into sections with the main government and law society reports listed first along with any specific commentary on them. Following these are listings of materials on women in law firms, women at the bar, women in the judiciary and finally a few items on women in the academy.

History

Australia has a shorter history of Western European culture and a stronger start in terms of women's rights in equal participation in the life of the community than many other nations. Australia was settled in 1788 and remained a penal colony for 80 years. Self government was granted in 1856 to all the colonies except Western Australia. From the 1880's, equal educational opportunities were provided for both girls and boys. Between 1884 and 1893, legislation was passed allowing women to own property separately from their husbands.⁹ Women were enfranchised at the federal level in 1901. State voting rights varied. Women were given the right to vote in state elections in South Australia in 1894, Western Australia in 1896, New South Wales 1902, Tasmania 1903 and Queensland in 1905. Victoria was the last state and 'held out' until 1908.¹⁰ Thus it is interesting to note at this point that 2005 marks the centenary of women's right to vote in Queensland and also the centenary of the admission of the first women lawyer in Australia – Flos Greig.

Linda Kirk points out that the 'legal profession has existed since medieval times and the professional division between barrister and solicitor was defined and regulated in England from the sixteenth century'.¹¹ Perhaps women's comparatively recent entry into an ancient profession can go some way to explaining the slow progress being experienced by women today – a century later.¹² The milestones are certainly well-spaced – the first woman practitioner admitted in 1905, the first woman Supreme

⁵ Thornton, M *Dissonance and Distrust: Women in the Legal Profession*. (Melbourne: Oxford University Press, 1996).

⁶ 1.

⁷ Thornton M, 'Women as fringe dwellers of the jurisprudential community' (Chapter 12 in Kirkby D (ed) *Sex Power and Justice: historical perspectives of law in Australia* Melbourne: OUP, 1995).

⁸ 291.

⁹ *Australian Political Milestones* (Melbourne: Thomas Nelson, 1976), 52.

¹⁰ *Ibid* 59, 60. For further information about the history of women in the law see Byrne G, 'Just dears: Western Australia's first women lawyers' (1994) 21(4) *Brief* 13-17;. For a comparison to NZ see Gatfield G, *Without Prejudice: Women in the Law* (Wellington: Brookers, 1996).

¹¹ Kirk L, 'Portia's place: Australia's first women lawyers' (1995) 1(1) *Australian Journal of Legal History* 75-91, 75.

¹² See for example the statistics in Hunter R, 'Women in the Legal Profession: The Australian Profile' in Schultz U. and Shaw G, (eds), *Women in the Worlds' Legal Professions: A Challenge to Law and Lawyers* (Oxford: Hart, 2002).

Court judge appointed in 1965 and in 1987 the first and only woman High Court judge.

1. The Main Reports

There have been a series of government, women's groups and law society reports addressing the various issues of women's equality before the law, gender bias within the judiciary and women working in the legal profession. The Women Lawyers associations in the various states but predominantly New South Wales and Victoria have been relentless in pursuing the issues of better work practices and the requirements of women working in the profession.

National

Australia Parliament Report by the Senate Standing Committee on Legal and Constitutional Affairs, A. (1994). *Gender Bias and the Judiciary*. Canberra: The Committee, May 1994. (Chair Barney Cooney No 0952 Tabled 30/5/1994 PP87/94 Government Response 29/05/95).

Australian Law Reform Commission, *Equality before the Law: Women's Equality* (Sydney: ALRC, 1994).

Commentary:

Dobinson J, 'Equality before the law (ALRC 67 and 69)' (2003) 83 *Spring Reform* 37-40.

Law Council of Australia, *2010: A Discussion Paper - Challenges for the Legal Profession* (Sydney: Law Council of Australia, 2001).

<http://www.lawcouncil.asn.au/publications.html> (14 February 2005)

Australian Capital Territory

ACT Gender Equity Forum, *Recommendations to the ACT Law Society on the Provision of Childcare Assistance*, January 1995.

New South Wales

Law Society of New South Wales, *Getting through the door is not enough – an examination of the equal employment opportunity response of the legal profession in the 1990s Survey*, November 1993.

Neilson J, *Gender Bias in the Civil Litigation System and its Impact on Women as Civil Litigants in NSW: Northern Rivers Region of NSW* (Report prepared for the NSW Department of Women, 1995).

New South Wales Ministry for the Status and Advancement of Women, *Gender Bias and the Law - Women Working in the Legal Profession in NSW*

Will K and Frost G (eds) *Taking up the Challenge - Women in the Legal Profession* (Melbourne: Victorian Women Lawyers, 1999).

Commentary:

Brown M, 'Workplace change needed to retain women' (2000) 74(9) October *Law Institute Journal* 26-27.

Will K, 'Taking up the Challenge' (2000) May *Australian Legal Practice* 5-6.

Victorian Women Lawyers, *A Snapshot of Employment Practices 2001 - A Survey of Victorian Law Firms*, (Melbourne: Victorian Women Lawyers 2001).

Kaufman S and Frost G, *Flexible Partnership – Making it Work in Law Firms* (Melbourne: Victorian Women Lawyers 2002).

http://www.vwl.asn.au/vwl_flexible.pdf (9 February 2005).

Western Australia

Western Australia Chief Justice's Taskforce on Gender Bias, *Report of the Chief Justice's Taskforce on Gender Bias* (Perth, WA Law Council, June 1994).

Law Society of Western Australia and Women Lawyers of Western Australia *Report on the Retention of Legal Practitioners: Final Report* (Perth, Law Society of Western Australia and Women Lawyers of Western Australia, 1999).

The tenor of all the reports in the last ten years is very similar. Change is needed in the legal workplace. However it is not obvious that any change has taken place in terms of the issues being addressed in the reports over that time. Here are some representative recommendations from these reports. These recommendations are from a Tasmanian report in 1995.¹³

- 'As a matter of priority, the profession should develop and implement changes to work practices to accommodate the family responsibilities of women lawyers.
- Sex discrimination and sexual harassment should be officially regarded as unprofessional conduct. Steps should be taken to implement effective codes of conduct to eliminate sex discrimination and sexual harassment in Tasmanian law firms.
- Guidelines should be developed to promote equal employment opportunity in Tasmanian law firms. The progress of women in the legal profession should be monitored and reported to encourage change and high light the achievements of the profession.

¹³ Goodluck, J. *Women Working in the Legal Profession in Tasmania: Final Report*. Prepared for the Women Lawyers Association of Tasmania by Ireland and Goodluck Corporate Consultants, December, 1996. See also Tasmanian Women's Consultative Council, *Women and Justice – Tasmanian women's access to the legal system* 1995.

- Education and training should include gender equity and emphasis should be placed on encouraging and assisting employers to address the barriers to the career advancement of women lawyers.’¹⁴

The next example is from 2001.¹⁵ This Law Council report discusses the reasons for the lack of women’s progress and concludes that they ‘seem to relate primarily to family responsibilities’. Motherhood is named as an impediment to advancement. The issue of work life balance is reflected in the main challenges identified in the paper. These recommendations are directed primarily to the firms and the professional bodies. The following were identified as challenges for firms:

- Developing human resources policies reflecting an appropriate work-life balance for staff at all stages of their careers, issues such as included expanded leave categories, flexible part time work policies and telecommuting,
- Developing a range of alternative career paths,
- Ensuring partners have appropriate leadership and mentoring skills, and
- Ensuring all staff have career development opportunities, access to training opportunities and variety of work.

The following challenges were identified for professional bodies:

- Developing minimum standards or benchmarks for employment related issues such as hours of work and telecommuting,
- The unavailability of demographic information such as ethnicity and Aboriginal or Torres Strait Islander descent, and
- Assistance to small firms with human resource issues, including developing small firm interchange programs and assisting small firms with recruitment.’¹⁶

The disappointing aspect therefore is that the reports from the nineties bear every resemblance to those from the last few years. Few advances seem to have been made. In fact it would seem from the tenor of some recent reports that some sectors of the legal profession are still firmly based in a work paradigm that is truly antithetical to women’s (and men’s) family responsibilities.¹⁷ The rate of change for women is truly incremental.

2. Women in Law Firms

There have been a range of journal articles dealing with the role of women in the law firms. Most of these have appeared in the professional journals – many interviews highlighting successful cameos of change, or promoting flexible work arrangements. Others highlight the need for part-time work and the tensions that exist for working mothers and fathers in a profession that is geared to 5 minute timesheets..

Batrouney J, ‘Gender Issues in Law Firms’ (2004) 30 *Portia* 10-11.

¹⁴ 3.

¹⁵ Law Council of Australia 2010: *A Discussion Paper - Challenges for the Legal Profession* Sydney, Law Council of Australia, 2001.

<http://www.lawcouncil.asn.au/publications.html> 14 February 2005

¹⁶ 157.

¹⁷ Featherstone T, ‘Professional Obsession’ (2005) 3 March *Business Review Weekly*.

- Boreham P, 'Labour Flexibility and Gender in the Service Sector: a study of employment practices in law and accounting firms' (1996) 32(2) *Australia and New Zealand Journal of Sociology* 20-37.
- Bourke J, 'Good management means flexible work practices even in the legal profession' (1998) 36(7) *Law Society Journal* 58-61.
- Boxall L, 'Fixing the organisation ... not fixing women' (2000) 74(5) *Law Institute Journal* 62-65.
- Campbell E, 'Achieving real equality' (2000) 74(1) *Law Institute Journal* 27-29.
- Chesterman S, 'Gender Ltd: why aren't more women on the boards of Australia's top 100 listed companies?' (1996) 14(6) *Company and Securities Law Journal* 352-361.
- Cornall R, 'A Question of Survival for Law Firms' (1995) 15(11) *Proctor* 21-24.
- Endre-Stacy H, 'Pandora's box' (1994) 5(1) *Polemic* 27-29.
- Gome A, 'Job satisfaction: is there a law against it?' (1995) 17(29) 31 July *Business Review Weekly* 92-95.
- Grant J, 'Tensions between practice and parenthood' (1997) 17(5) *Proctor* 24-27.
- Gray J, King P and Woellner R, 'Facing up to change' (1998) 36(2) *Law Society Journal* 44-49.
- Hampell F, 'Women in the legal profession' (1999) 73(5) *Law Institute Journal* 19-21. (Australian Women Lawyers Briefing Paper prepared for the Federal Attorney-General March 1999).
- Hogan-Doran D, 'New practices create new opportunities for women in the law' (1999) 37(2) *Law Society Journal* 71-72.
- Hunter R and McKelvie H, 'Gender and legal practice' (1999) 24(2) *Alternative Law Journal* 57-61.
- Israel S F and McDonald K, 'Gender issues for the legal profession' (1999) 37(4) *Law Society Journal* 60-62.
- Israel S and McDonald K, 'Disparities continue between women and men in the legal profession: gender issues in the 1999-2000 practising certificate survey' (2001) 39(1) February *Law Society Journal* 63-66.
- Janssen A, 'A decade of change' (2000) 1(12) 8 September *Lawyers' Weekly* 14-15.
- Julian L M, 'The path to partnership' (1996) 16(8) *Proctor* 13-15.
- Kahlert G, 'Flexible work practices' (1998) 18(8) *Proctor* 29-30.

Kremmer D, 'Flexible work arrangements break down barriers to achievement' (1995) 33(6) *Law Society Journal* 64-66.

Macalister P, 'Part-time lawyering' (1998) 26(11) *Law Society Journal* 59-62.

Moyle S and Sandler M, 'Effective law effecting change: the Sex Discrimination Act and women in the legal profession' (2003) 83 *Spring Reform* 10-13.

Rayner M, 'New developments in equal opportunity' (Paper presented at the 14th Women, Management and Employment Relations Conference, 2002).

Richards A, 'Women in the legal profession: an overview' (2003) 83 *Spring Reform* 14-19.

Roach Anleu S, 'Women in the Legal Profession: Theory and Research' (Paper presented at the Australian Institute of Criminology Women and the law conference, Canberra, 24-26 September 1991).

Thornton M, 'Authority and corporeality: The Conundrum for Women in Law' (1998) 6 (2) *Feminist Legal Studies* 147-170.

Thus the themes running through the literature from the last ten years on the organisation of the law firms and law societies are constant and the recommendations boringly familiar. They include issues of education, enforcement of codes of conduct rules, flexible work practices, and equality of opportunity. More widespread take-up of the Law Council of Australia's *Model Employment Agreement* (19 September 2003) would seem to be a step in the right direction.¹⁸ The issues for the law societies and the firms seem clear. Yet the changes are slow indeed and the vision of the need for change very limited. There needs to be a will to change the rules to accommodate the 'others' and that appears to be absent.

3. Women at the Bar

Issues for women at the bar are graver still. Work at the Bar tends to be unpredictable, the hours are long, and barristers need to be able to fund their own careers for as much time as it takes to gain acceptance and achieve a reasonably steady flow of briefs. The bar is steeped in tradition and many of these traditions are built around masculine rituals. But the stakes are high. This is the main gateway to the judiciary. For women to achieve 'meritorious' placement on the bench then they must succeed at the bar.

Reports

The groundbreaking 1998 report on the Victorian Bar sparked much discussion and analysis in the sector. However, after the first wave response, actual change has been more limited.

Hunter R and McKelvie H, *Equality of Opportunity for Women at the Victorian Bar: A Report to the Victorian Bar Council* (Melbourne: Victorian Bar Council, 1998).

¹⁸ <http://www.lawcouncil.asn.au/policy/2388251750> (27/4/05).

Commentary:

'Equality of opportunity for women at the Victorian Bar' (1998) 106 Spring *Victorian Bar News* 26-30.

Sparke C, 'Gender Equity Report: A Personal Response' (1998) 106 Spring *Victorian Bar News* 31-32, 34.

Gaudron T, *A happy coincidence of self-interest and the public interest: equality of opportunity for women at the Victorian Bar* (Paper delivered at the launch of the Victorian Bar Council's plans for responding to 'Equality of Opportunity for Women at the Victorian Bar: A Report', 9 October 1998).

Bar Association of Queensland, *Queensland Bar's Response to the 'Equality of Opportunity for Women at the Victorian Bar'* (Brisbane: Equal Opportunities Panel, 2000).

Millane F, *Survey Report 2003* (Victorian Bar Equality Before the Law Committee, 2003). <http://www.vicbar.com.au/pdf/Revised%20Survey%20Report%20-%2018%20August%2020032.pdf> (16/5/05).

Other Commentary:

Adamson C, 'Equity is equality' (2004) Winter *Bar News: Journal of the NSW Bar Association* 33-34.

Balmford J R, 'Gender Equality in Courts and Tribunals' (1995) 94 Spring *Victorian Bar News* 34-46.

Bartlett D, 'Doing it tough: Gender issues at the Bar' (1997) 32(7) *Australian Lawyer* 16-17.

Batrouney J, 'Rebalancing the scales' (2004) 193 28 May *Lawyers Weekly* 22-23.

Branson C, 'Running on the edge' (1998) 107 Summer *Victorian Bar News* 29-32.

Brown M, 'Supporting the sisterhood' (2000) 74(2) *Law Institute Journal* 30.

Curtain D, 'Council committed to elimination of gender discrimination at the Bar' (1998) 106 Spring *Victorian Bar News* 7-8.

Eckert J, *Women in Law: Is the legal profession prepared for the 21st century* (Paper presented at the Inter-Pacific Bar Association Conference, Manilla, May 1996).

Gleeson J and Sofroniou R, 'Why are there so few women at the Bar?' (2004) Winter *Bar News: Journal of the NSW Bar Association* 27-30.

Hogan-Doran D, 'Women, the Bar and democracy' (2004) Winter *Bar News: Journal of the NSW Bar Association* 31-33.

Hogan-Doran D, 'Keeping gender on the agenda' (2004) 16(1) *Sydney Papers* 42, 51-55.

Hunter R, and McKelvie H, 'Balancing Work and Family Responsibilities at the Bar' (1999) 12(3) *Australian Journal of Labour Law* 167-192.

Hunter R, *Border Protection on Law's Empire: Feminist Explorations of Access to Justice* (Professorial Lecture Series, Griffith University, 2002).

Hunter R, 'Talking up Equality: Women Barristers and the Denial of Discrimination' (2002) *Feminist Legal Studies* 113.

Hunter R, 'Women Barristers and Gender Difference' in Schultz U. and Shaw G, (eds), *Women in the Worlds' Legal Professions: A Challenge to Law and Lawyers* (Oxford: Hart, 2002).

'It's time to move on' (2004) *Winter Bar News: Journal of the NSW Bar Association* 44.

Kirby M, 'Women lawyers - making a difference' (1998) 10 March *Australian Feminist Law Journal* 125-136.

Kirby T, *Women in the law - what next?* (2002) 16 June *Australian Feminist Law Journal* 148-156

Liverani M R, 'Winds of cultural change given some puff: law bodies press for equitable briefing practice' (2004) 42(7) *Law Society Journal* 22-24.

Lydiard V, 'Women needed help and now they are getting it' (2004) *Winter Bar News: Journal of the NSW Bar Association* 45-46.

Neave M, 'Women at the Victorian Bar - reform or rejection' (1999) 12 March *Australian Feminist Law Journal* 121-125.

Needham J, 'Perceptions are the underlying problem' (2004) *Winter Bar News: Journal of the NSW Bar Association* 42.

Silverii J, 'Justice Kirby calls on the legal profession to change course' (2001) 75(10) *Law Institute Journal* 20-22.

Silverii J, 'Renewed push on briefing practices' (2003) 77(9) *Law Institute Journal* 26-27.

Silverii J, 'Hulls moves on briefing practices' (2003) 77(10) *Law Institute Journal* 18-19.

Silverii J, 'Mallesons adopts model briefing policy' (2004) 78(4) *Law Institute Journal* 28.

Taylor I and Winslow C, 'A statistical analysis of gender at the NSW Bar' (2004) *Winter Bar News: Journal of the NSW Bar Association* 20-26.

Warren M, 'Women and the law: promoting difference' (2003) 126 Spring *Victorian Bar News* 20-23.

Williams A, 'Women at the Bar' (1999) 26(5) *Brief* 5-11.

The principal development heralding a new era for women barristers is the gradual adoption of the Law Council's *Model Equal Opportunity Briefing Policy for Female Barristers and Advocates* (20 March 2004)¹⁹ throughout the government and major national solicitors' firms. This has the potential to ensure that women barristers are at least given more opportunity to undertake a wider range of work and thus gain experience at all levels.

3. Women in the Judiciary

Most of the commentary in relation to women on the Bench points to the very few appointments being made and canvasses the need for greater gender equity as well as the likely substantive impact of more female appointments.

Reports

Australia Attorney-General's Department *Judicial Appointments - Procedure and Criteria: Discussion Paper*. (Canberra Attorney-General's Department, 1993).

Tasmania Department of Justice *Judicial Appointments - Procedure and Criteria: Discussion Paper*. (Hobart: Department of Justice, 1999).

Articles

Beazley M, 'Women on the Bench' (2003) 83 Spring *Reform* 20-22.

Davis R and Williams G, 'A century of appointments but only one woman' (2003) 28(2) *Alternative Law Journal* 54-58.

Davis R and Williams G, 'Reform of the Judicial Appointments Process: Gender and the Bench of the High Court of Australia' (2003) 27 (3) *Melbourne University Law Review* 819-863.

Cooney S, 'Gender and judicial selection: should there be more women on the courts?' (1993) 19(1) *Melbourne University Law Review* 20-44.

Gaudron M, 'Speech to launch Australian Women Lawyers' (1998) 72(2) *Australian Law Journal* 119, 123-124

Gaudron M, 'Speech to launch Corporate Women, Children, Careers and Workplace Culture: The Integration of Flexible Work Practices into the Legal and Finance Professions' Sydney, NSW Parliament House, 14 July 2000.

¹⁹ <http://www.lawcouncil.asn.au/policy/2393225385> (27/4/05).

Gaudron M. 'Speech for the Women Lawyers Association of New South Wales 50th Anniversary Gala Dinner'. Sydney, Women Lawyers Association of New South Wales, 13 June 2002.

Graycar R, 'The gender of judgements: would women judges make a difference?' (1994) 19 *Women in Leadership Public Lecture Series* 30.

Gregorczyk H, 'The desirability of judicial education in Australia' (1996) 14(1) *Journal of Professional Legal Education* 77-95.

Hamilton B, 'Criteria for judicial appointment and 'merit'' (1999) 15 *Queensland University of Technology Law Journal* 10-22.

Hamilton B, 'The law council of Australia policy 2001 on the process of judicial appointments: any good news for future female judicial appointees?' (2001) 1(2) *Queensland University of Technology Law and Justice Journal* 223-240.

Martin M, 'Women judges - when?' (1992) 66(5) *Law Institute Journal* 393.

O'Sullivan D, 'Gender and judicial appointment' (1996) 19(1) *University of Queensland Law Journal* 107-124.

Scutt J A, 'Restricted vision – women, witches and wickedness in the courtroom' (2001) 6(1) *Deakin Law Review* 40-65.

White M, 'Judicial appointments: including the role of the Attorney-General' (2000) 20(2) *Australian Bar Review* 115-161.

A Law Council of Australia *Policy on the Process of Judicial Appointments* was released on 28 January 2001.²⁰ The Policy is a process for developing a protocol for judicial appointment at both State and federal level (with the exception of appointments to the High Court). The Policy includes Appendices listing the 'attributes of candidates for judicial office'. These cover legal knowledge and experience, professional qualities and personal qualities including gender awareness. There is also a list of officials to be consulted prior to appointment. Some discussion has ensued on the terms of this policy but such guidelines are certainly a necessary first step in a more transparent appointment procedure.²¹

4. Women in academe

Several texts have been published by feminist academics on women and the law, and these have often been required reading for the various electives and theories units in law schools. Some examples of these are:

²⁰ <http://www.lawcouncil.asn.au/policy/1957352833> (27/4/05).

²¹ Hamilton B, 'The Law Council of Australia Policy 2001 on the Process of Judicial Appointments: Any Good News for Future Female Judicial Appointees?' (2001) 1(2) *QUT Law and Justice Journal* 223-240; and see the policy <http://www.lawcouncil.asn.au/policies.html> (27/4/05); also Hamilton B, 'Criteria for Judicial Appointment and Merit' (1999) 15 *Queensland University of Technology Law Journal* 10-22.

Davies M, *Asking the Law Question* (2 ed, Sydney: Law Book, 2001).

Graycar R and Morgan J, *the hidden gender of law* (2nd ed Sydney: The Federation Press, 2002).

Kirkby D, ed *Sex Power and Justice* (Oxford: Oxford University Press, 1995).

Scutt J, *The Incredible Woman: Power & Sexual Politics* (Melbourne: Artemis, 1997. 2 vols).

Thornton M, *Public and Private: Feminist Legal Debates* (Oxford: Oxford University Press, 1995).

Thornton M, ed *Romancing the Tomes: Popular Culture, Law and Feminism* (London: Cavendish Publishing Limited, 2002).

There are chapters and segments within these dealing with women's experience of the legal profession. But the literature on women's experience of law faculties in Australia is more limited. Of course, there has been wider discussion of gender equity issues in university staffing profiles generally. An example of this is Clare Burton's landmark study.²²

Adams K, 'Dorothy goes to law school: stories of institutional inertia and response in the American legal academy' (2001) 1(2) *Queensland University of Technology Law and Justice Journal* 189-198.

Thornton M, 'Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same' (1998) 36 *Osgoode Hall Law Journal* 369-398.

Thornton M, 'The demise of diversity in legal education: Globalisation and the new knowledge economy' (2001) 8(1) *International Journal of the Legal Profession* 37-56.

Thornton M, 'Feeling chilly (again) in the legal academy' (2003) 18 June *Australian Feminist Law Journal* 145-151.

Thornton M, 'Corrosive Leadership (Or Bullying by Another Name): A Corollary of the Corporatised Academy?' (2004) 17 *Australian Journal of Labour Law* 161-184.

Wells C, 'Ladies in waiting: the women law professors' story' (2001) 23(2) *Sydney Law Review* 167-184.

The tenor of the discussion in these papers points to a more competitive and harsher economic environment in the universities affecting the academic climate overall. The suggestion is that this climate is not conducive to women's advancement.

²² Burton C, *Gender Equity in Australian University Staffing*, Evaluations and Investigations Program Monograph 97/18, Higher Education Division, Department of Employment, Education, Training and Youth Affairs (Canberra: AGPS, 1997). See <http://www.wel.org.au/burton/> (20 April 2005).

Conclusion

This select listing represents a start in terms of cataloguing writing on Women in the Legal Profession in Australia – an issue which is so intrinsically important to feminist scholarship. Researchers in this field will also find the various Law Library Pathfinders useful.²³ Increasingly, too, this material is becoming available electronically through the Law Society and Women Lawyers association sites.²⁴ The Queensland Supreme Court Library, for example, has developed a particularly informative site devoted to Women in the Law in Queensland.²⁵ In addition, Women Lawyers associations have been extremely active in putting forward an alternate view through their various publications including the Victorian Women Lawyers quarterly journal *Portia*.

The themes from the literature and reports are unsurprising:

1. Women comprise over 50% of law graduates.
2. Women are earning less than their male counterparts in the profession.
3. Women are not progressing through the hierarchies of the profession at a rate commensurate to their overall participation.
4. Women tend to leave private practice in favour of the government and public sector and corporate employment.
5. The costs of this attrition are substantial but not acknowledged.
6. Accurate national statistics are still not available.

The challenges for progress are obvious therefore but the vehicle for change is more difficult to define. Some main themes tend to emerge in the reports including the need for flexible work practices, collection of reliable statistics, equal opportunity briefing policies, more transparent and ‘objective’ criteria in relation to judicial selection and an attempt to redress the gender imbalance on the bench, the need for gaps in sexual harassment and sex discrimination legislation be removed, the need for professional conduct rules to be changed to include sexual harassment and discrimination, and more equal opportunity information and education be provided at all levels of the profession.

Therefore, the more recent reports are suggesting that the answer lies in a better work-life balance particularly in the legal firms. This would benefit the whole of that workforce and in so doing would be especially beneficial to women. Obviously the answer is not as simple as that. In addition, better work-life balance and flexible work practices are not a complete answer for the issues confronting women barristers. One of the main issues in that sphere would seem to be briefing practices. The current trend for the larger firms to adopt the Law Council of Australia’s Model Briefing Policy must have a positive effect. However, this would still not address the culture of invented traditions steeped in male values which from the reports pose such a

²³ University of Sydney Law School, *Pathfinder Feminist Legal Studies* (2001) University of Sydney http://www.law.usyd.edu.au/~library/pathfind/fem_p.htm#Bibliographies (13 February 2005).

²⁴ Studies on Women in Legal Practice http://www.womenlawyers.org.au/studies_on_women_in_legal_practice.htm (7 February 2005).

²⁵ <http://www.courts.qld.gov.au/library/exhibition/women/default.htm> (20 April 2005)

nebulous barrier to many women.²⁶ Women in academia already have the benefits of flexible work practices and university equity requirements and processes. However, the same issues of concentration of women academics within the lower ranks of the hierarchy and slow progression through the various academic levels remain ... It is a conundrum and hopefully bibliographies such as this will ease the way for further research in the area.

²⁶ Hunter R, 'Women Barristers and Gender Difference' in Schultz U and Shaw G, (eds), *Women in the Worlds' Legal Professions: A Challenge to Law and Lawyers* (Oxford: Hart, 2002).