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ANNUAL 2009
VICTORIAN WOMEN LAWYERS



PROTECTING WOMEN'S RIGHTS



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KATE BURGESS

ADMINISTRATOR

TRACEY SPILLER

VICTORIAN WOMEN LAWYERS

GPO Box 2314V or DX350

Melbourne VIC 3001

Ph: +61 3 9607 9446

Fax: +61 3 9607 9558

Email: info@vwl.asn.au

Website: www.vwl.asn.au

The Objectives of the Association:

- (a) to provide a common meeting ground for women lawyers;
- (b) to foster the continuing education and development of women lawyers in all matters of legal interest;
- (c) to encourage and provide for the entry of women into the legal profession and their advancement within the legal profession;
- (d) to work towards the reform of the law;
- (e) to participate as a body in matters of interest to the legal profession;
- (f) to promote the understanding and support of women's legal and human rights; and
- (g) such other objectives as the Association may in General Meeting decide.

Further, the Association also adopts the objectives of the Australian Women Lawyers and is a Recognised Organisation of that Association:

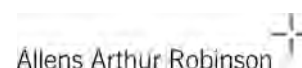
- (a) achieve justice and equality for all women;
- (b) further understanding of and support for the legal rights of all women;
- (c) identify, highlight and eradicate discrimination against women in law and in the legal system;
- (d) advance equality for women in the legal profession;
- (e) create and enhance awareness of women's contribution to the practise and development of the law; and
- (f) provide a professional and social network for women lawyers.

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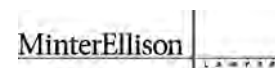
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All of the women involved in Victorian Women Lawyers are dedicated professionals and it has been truly humbling for me to experience their dedication to the Association. There are many different ways our members contribute – from writing a law reform submission, to organising a networking function for regional members, mentoring a student or sharing their career challenges in a panel discussion. All of these activities contribute to the objectives of VWL.

I would like to express my thanks to the VWL 2009 Executive Committee, Committee Chairs, Committee Members and every VWL Member for their contribution to and support of VWL. It has been a great year where we have seen a number of new initiatives gain momentum while we continue our work on law reform and professional issues.

I became involved in VWL through my interest in professional issues facing women in the law and at work generally. The need for a strong voice for women on professional issues is just as important now as it ever was. It is over 20 years since equal numbers of women and men were admitted to practice yet women are still grossly under-represented in senior roles in the profession. The legal profession is not alone in the under-representation of women. The 2008 Australian Census of Women in Leadership shows that women hold only 8 per cent of seats on the boards of the top 200 companies - and those women tend to have multiple board positions.

Does it matter that women make up more than half the population in Australia yet occupy far fewer leadership positions than men? What difference does it make? One difference that should matter to companies and their shareholders (and partners of law firms) is this: companies with more women in senior management are more profitable than those with fewer. In 2004, Catalyst - an organization working to advance women in business - conducted research into the relationship between the profitability of companies and the representation of women in senior management. The study revealed that companies with the highest representation of women in senior management achieved a 35 per cent higher return on investment and a 34 per cent higher total return to shareholders than companies with the lowest women's representation.

This survey alone is unable to tell us why this should be the case but one could posit that having decision-makers who reflect a company's customers and staff means that better decisions are made. Without the participation of women, decisions are made that do not take into account the skills, learning and experiences of more than half the population. This is clearly a problem when decisions are being made about issues that are clearly gender-related: family violence, giving birth, contraception, abortion and childcare. But it is equally a problem that women who want to participate, whatever their chosen field, are not able to do so.

The experience of women in the legal profession over the last 20 years has shown us that we cannot expect that women will progress as more women enter the profession. What is needed is a paradigm shift.

The book 'The book 'Why women mean business: understanding the emergence of our next economic revolution' by Aviva Wittenberg-Cox and Alison Maitland, argues that organisations that adapt to women and make them truly welcome will benefit from being able to draw on the widest pool of talent. This would entail understanding that work priorities change at different life stages and recognising that the linear, unbroken career model is unsustainable. It would mean broadening definitions of career paths at senior levels and treating flexibility and work/life balance as issues for everyone. It would mean measuring performance by results, not hours and developing talented people's potential, no matter what their age. Many law firms are tackling this issue and putting in place programs and policies to assist women (and men) to challenge traditional concepts of work, however more work needs to be done and I urge all members to support VWL in its work.

WORD FROM THE VWL CONVENOR

JENNIFER KANIS



JENNIFER KANIS

MESSAGE FROM OUR PATRON

THE HONOURABLE MARILYN WARREN,
CHIEF JUSTICE OF THE SUPREME COURT OF VICTORIA

“VICTORIAN WOMEN LAWYERS AND OTHER ORGANISATIONS HAVE WORKED HARD TO INVESTIGATE ISSUES SURROUNDING GENDER BIAS. THE GROUNDWORK HAS BEEN DONE.”

Opportunities for women in the law have improved vastly in the past two decades. Women are entering the law in Victoria in unprecedented numbers. However, there is still much to be done to address lingering gender bias in the culture and structures of the profession.

One only need look to the statistics for 2009 to see that, although women are entering the profession in vast numbers, their ability or desire to remain wanes. Of the 1463 new lawyers admitted in Victoria this year, 60 per cent were female. Just under half of lawyers signing the Victorian Bar roll were women. Despite this, a partnership survey of selected firms revealed that only 27 per cent of new partners were women. At the Bar, women comprise just 22 per cent of the total number of counsel. Court appearance data reveals that, in higher courts in Victoria, appearance by gender proportions is significantly different when compared with gender proportions at the Bar. Women simply do not spend as much time on their feet as men do in the higher courts. Similarly, the proportion of private firm briefs going to female barristers is far lower than the proportion of females at the Bar.

The difficulties of retention and career advancement opportunities cannot be overcome by a simple ‘promote and prosper’ approach. A more considered solution is necessary. Promotion must be on merit. It is therefore essential that we look to the underlying factors causing disparities, and work to resolve systemic gender bias issues.

Money is not the only factor driving retention of talent in the profession. Job satisfaction and work-life balance remain important considerations for both men and women. Flexible working arrangements, mentoring schemes and briefing policies are part of the solution. A Model Briefing Policy has been implemented in relation to briefing counsel by panel firms in government matters. A similar policy should be developed for private firms briefing non-government matters.

Victorian Women Lawyers and other organisations have worked hard to investigate issues surrounding gender bias. The groundwork has been done. It is for the profession as a whole to transform the debate from discussion and research to the implementation of practical and effective policy. Diversity of approach amongst individuals, both female and male, creates robust and adaptable systems and organisations. The profession can only be stronger if it embraces the diversity of talent and skill that exists within it.

Meanwhile, we must keep gender on the agenda.

*Marilyn Warren AC
Chief Justice
Supreme Court of Victoria*



MARILYN WARREN

THE ROLE OF COURTS AND TRIBUNALS IN PROMOTING AND PROTECTING HUMAN RIGHTS UNDER THE VICTORIAN CHARTER

MONIQUE CARROLL, SENIOR ASSOCIATE, ALLENS ARTHUR ROBINSON

INTRODUCTION

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (the “Charter”) came into full operation on 1 January 2008 and is aimed at establishing “a framework for the protection and promotion of human rights in Victoria”.¹ There have since been few judgments which authoritatively consider how the Charter’s framework operates in practice, with the most significant to date being the decision of Bell J in *Kracke v Mental Health Review Board & Ors (General)* [2009] VCAT 646. This article considers the operation and effect of the Charter since its commencement, and in particular, the role of courts and tribunals in promoting and protecting human rights in Victoria.

KEY PROVISIONS OF THE CHARTER

The role of courts and tribunals in the Charter’s framework is established by s6(2)(b) and (c) of the Charter. Section 6(2)(b) provides that the Charter applies to “courts and tribunals, to the extent that they have functions under Part 2 and Division 3 of Part 3”.

Part 2 of the Charter sets out the human rights protected by the Parliament (the “Charter rights”) and provides that “a human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom...”.² The human rights protected are primarily taken from the *International Covenant on Civil and Political Rights* and include, by way of example the rights of:

8. Recognition and equality before the law

- (1) *Every person has the right to recognition as a person before the law.*
- (2) *Every person has the right to enjoy his or her human rights without discrimination.*
- (3) *Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.*

...

21. Right to liberty and security of person

- (1) *Every person has the right to liberty and security.*
- (2) *A person must not be subject to arbitrary arrest or detention.*
- (3) *A person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.*
- (4) *A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against him or her.*
- (5) *A person who is arrested or detained on a criminal charge –*
 - (a) *must be promptly brought before a court; and*
 - (b) *has the right to be brought to trial without unreasonable delay; and*
 - (c) *must be released if paragraph (a) or (b) is not complied with.*
- (6) *A person awaiting trial must not be automatically detained in custody but his or her release may be subject to guarantees to appear –*
 - (a) *for trial; and*
 - (b) *at any other stage of the judicial proceeding; and*
 - (c) *if appropriate, for execution of judgment.*

...

Division 3 of Part 3 of the Charter is entitled “Interpretation of law” and contains s32(1) which provides that:

So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.

...

Courts and tribunals are public authorities when they are not acting judicially.³ Section 6(2)(c) of the Charter provides that the Charter applies “to public authorities, to the extent that they have functions under Division 4 of Part 3 of the Charter”. Division 4 of Part 3 of the Charter contains s38(1) which provides that:

... it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

Two important issues have arisen out of these provisions. The first is the extent to which courts and tribunals, acting judicially, have functions in relation to all or only some of the Charter rights. The second is at what stage of the statutory construction process does it become necessary to interpret the statutory provision compatibly with the Charter rights.

THE EXTENT OF A COURT’S OR TRIBUNAL’S FUNCTION UNDER PART 2 OF THE CHARTER

The issue to be determined here is the extent to which courts and tribunals have a function in relation to the Charter rights, in addition to applying the interpretative obligation contained in s32(1) of the Charter in determining the meaning of a statutory provision. Given that s6(1) of the Charter provides that “All persons have the human rights set out in Part 2”, a broad view, and arguably the most Charter compliant view, is that as courts and tribunals provide for the enforcement and protection of legal rights, courts and tribunals have the function of observing and enforcing the Charter rights possessed by all persons, if

and when they are raised before them. Such an interpretation would be consistent with the objects of the Charter, being to protect and promote human rights⁴ and the requirement of the Charter itself that all Acts are to be interpreted so that they are consistent with the Charter rights.⁵

Two other (more narrow) views have been put. One is that courts and tribunals have functions only in relation to those Charter rights that relate to court or tribunal proceedings. The other is that courts and tribunals only have functions in relation to those Charter rights which specifically refer to courts or tribunals.

This issue was addressed by Bell J, sitting as president of the Victorian Civil and Administrative Tribunal in *Kracke*, the most comprehensive and authoritative decision to date on the Charter. Bell J held that the “broad interpretation would give best effect to the purposes of the Charter” and would seem “natural and appropriate” as courts and tribunals are “institutions of justice with responsibility for interpreting and enforcing human rights.”⁶ However, Bell J also took the view that this approach was inconsistent with the structure of the Charter, and in particular, the exemption for courts and tribunals acting judicially from the operation of s38(1). As such, Bell J held that it was not intended that the Charter would apply to courts and tribunals as if they were public authorities,⁷ to do so, according to his Honour, would allow the Charter to indirectly bring about a result which has been directly excluded.⁸

Instead, Bell J preferred the next best alternative, the intermediate view that “the functions under Part 2 referred to in s6(2)(b) are the functions of applying or enforcing those human rights that relate to court and tribunal proceedings.”⁹ However, this approach results in asymmetry between the obligations of courts and tribunals acting judicially, arguably their most important function, compared to when they are acting as public authorities, as in the latter case, they will have a greater obligation to observe the Charter rights. This approach also creates asymmetry between the Charter rights, as all rights are relevant to the decisions and acts of public authorities and to the interpretative obligation, but only some rights, and some parts of some rights, are relevant to courts and tribunals acting judicially.

This asymmetry can be demonstrated from the Charter rights set out above. According to the intermediate approach, the right to recognition and equality before the law is not relevant to courts and tribunals acting judicially, “...because it relates to the rights possessed by individuals rather than to court and tribunal proceedings.”¹⁰ Similarly, the right to liberty and security of person provided by s21(1) is not to be observed by courts and tribunals acting judicially, but the right provided in s21(6) of the Charter, requiring courts (and tribunals) to not automatically detain persons awaiting trial in custody, a subset of the right to liberty and security of person but which requires courts and tribunals to act in a particular way, is applicable.

Unfortunately Bell J did not address how to reconcile this asymmetry and only stated that anything other than the broad approach to s6(2)(b) would create asymmetry and would put Victoria out of step with the international standard adopted in the United Kingdom, New Zealand and South Africa.¹¹

The adoption of the intermediate approach also restricts the role of courts and tribunals under the Charter in promoting and protecting the Charter rights. Instead of a situation where all Charter rights are justiciable if they arise before a court or tribunal, only limited rights are justiciable, many of which are already protected at common law or by other statutory provisions.

Alternatively, the apparent contradiction with the obligations of public authorities under s38 of the Charter could have been reconciled by considering that s38(1) of the Charter, like s32, provides a specific framework for the acts and decisions of public authorities, which would not apply to courts and tribunals acting judicially, even if they are bound to observe all of the Charter rights. In the event that a court's or tribunal's observation of a Charter right was questioned, possible avenues for redress could include a right of appeal, the writs of certiorari or mandamus, or for tribunals, jurisdictional error (for example, failure to take into account a relevant consideration), or a referral of the question to the Supreme Court of Victoria under s33 of the Charter.

In any event, whilst Bell J has adopted the intermediate approach so that the Charter rights do not apply to courts and tribunals acting judicially, his Honour did not address whether the intermediate position also results in courts and tribunals being treated as though they were public authorities in limited circumstances. Another alternative would have been to hold that courts and tribunals have the function of protecting and enforcing all Charter rights arising before them, rather than being bound to themselves act in accordance with those Charter rights.

THE SCOPE OF THE S32(1) INTERPRETATIVE FUNCTION

The Charter also requires courts and tribunals to interpret statutory provisions compatibly with the Charter rights, so far as it is possible do so, consistently with the purpose of the statutory provision.¹² However, the interpretative obligation is far reaching and “applies to anybody whose rights, obligations and interests may be governed or affected by legislation.”¹³

The predominant issue arising from this provision is, at what stage of the statutory construction process does it become necessary to interpret a statutory provision compatibly with the Charter rights.

There are generally two views as to the correct approach. The broad approach is that the s32(1) interpretative obligation is an ordinary principle of the rules of statutory interpretation in Victoria, akin to s35(a) of the *Interpretation of Legislation Act 1984* (Vic) which requires that a statutory construction be adopted which best promotes the underlying purpose of the statutory provision. Hence when determining the meaning of a statutory provision, resort is to be had to s32(1) of the Charter at the first instance to arrive at the correct interpretation. The only limitation on the scope of this obligation is the legislative objective of the provision in question, which is expressly provided for by the wording of s32(1) of the Charter.

Where the statutory provision limits a Charter right and cannot therefore be interpreted compatibly with the Charter rights, resort is only then to be had to s7(2) of the Charter to determine whether that limitation is reasonable and can be demonstrably justified in a free and democratic society.

The other view is that the s32(1) interpretative obligation only comes into play when, after applying ordinary principles of statutory construction which do not include s32(1) of the Charter, it is determined that a statutory provision limits a Charter right and that limitation is not reasonable and demonstrably justified in a free and democratic society. Where any limits on a Charter right cannot be justified according to s7(2) of the Charter, s32(1) is to be used to see if the provision can be re-interpreted to remove any incompatibility with the Charter right.

In *Kracke*, Bell J adopted the latter view. In reaching this view, his Honour noted that “standard principles of interpretation”, which presume that a statutory provision is not intended to encroach upon fundamental rights and freedoms and allow resort to Australia’s international obligations, may mean that a statutory provision can be interpreted consistently with human rights without “the need to resort to the special interpretative obligation in s32(1).”¹⁴

The approach adopted by Bell J¹⁵ introduces a “stepped approach” to the interpretative obligation, and arguably, also to the task of statutory construction in Victoria, which is not readily apparent from a plain reading of the Charter, nor from any of the relevant extraneous materials. Further, this approach is likely to reduce the relevance of the s32(1) interpretative obligation in the promotion and protection of human rights in Victoria. This is because, by requiring all interpreters of statutory provisions to apply s7(2) to determine whether any limitations on rights are justified as an ordinary principle of statutory construction, the Charter’s focus alters from ensuring that all statutory provisions are interpreted compatibly with human rights, to determining whether limitations on rights are justified.

This “stepped approach” also introduces a complicated legal analysis into the task of statutory construction in Victoria. As set out by Bell J in *Kracke*,¹⁶ s7(2) requires consideration of the “legality” and “proportionality” of any proposed limitations, where legality encompasses a consideration of the source of the limitation, but also a requirement that the law “possess certain minimum attributes.”¹⁷ Proportionality encompasses a balancing exercise between the nature and purpose of the limitation on the right and the “pressing and substantial social benefits offered in justification.”¹⁸ Where a statutory provision limits rights, the outcome of this complex balancing exercise must be determined before the relevance of the interpretative obligation can be ascertained. Further, it appears that the party seeking to justify the limitation before a court, will ultimately be required to adduce evidence as to the merit of the limitation.¹⁹ As such, the availability and nature of evidence supporting the limitation would also need to be considered in determining whether resort should be made to the s32(1) interpretative obligation.

Accordingly, the effect of *Kracke* is to make the scope of the interpretative obligation a complicated question of law, which is arguably, best left to be decided by a court or tribunal, rather than public authorities on a case-by-case basis, which is the likely result of such an approach to statutory construction.

CONCLUSION

Kracke, a judgment which in many aspects provides strong support for the protection of human rights in Victoria, has also significantly limited the potential function of courts and tribunals in the promotion and protection of human rights under the Charter’s framework. Practically, courts and tribunals acting judicially are only bound to enforce and observe limited Charter rights relating to the proceedings of the court or tribunal, and the interpretative obligation in s32(1) will only apply to determine the meaning of a statutory provision if s7(2) has been used to determine that the statutory provision in question unjustifiably limits a Charter right.

The Court of Appeal in *R v Momcilovic* [2010] VSCA 50 was recently handed down which overruled some aspects of *Kracke*.

¹ Explanatory Memorandum for the Charter of Human Rights and Responsibilities Bill, p 1.

² The Charter, s7(2).

³ See s4(j) of the Charter and *Sabet v Medical Practitioners Board of Victoria* (2008) 20 VR 414.

⁴ The Charter, s1(2).

⁵ This interpretation is also supported by: M Bagaric and P Faris QC, “Charter of Human Rights: More punch than expected” (2007) 81(7) LJL, p 64.

⁶ See para 243.

⁷ See para 246.

⁸ See para 246.

⁹ See para 250.

¹⁰ See para 253.

¹¹ See para 243.

¹² Section 32(1).

¹³ *Kracke*, para 207.

¹⁴ *Kracke*, paras 40 and 50.

¹⁵ And subsequently a number of other Victorian judges.

¹⁶ Paras 98 to 197.

¹⁷ Para 165.

¹⁸ Para 111.

¹⁹ This was not addressed in *Kracke*, but see *R v Shayler* [2002] 2 All ER 477.

WHAT ROLE DOES A HUMAN RIGHTS CHARTER PLAY IN EDUCATION?

DR PAULA GERBER DEPUTY DIRECTOR CASTAN CENTRE FOR HUMAN RIGHTS LAW, SENIOR LECTURER,
MONASH UNIVERSITY LAW SCHOOL



DR PAULA GERBER

INTRODUCTION

The international community has long recognised the important role that education plays in creating a culture of human rights. When the Universal Declaration of Human Rights was drafted in the aftermath of the Holocaust, it included a provision that education must focus on strengthening respect for human rights and fundamental freedoms, and promoting peace, understanding, tolerance and friendship among all nations, racial and religious groups.¹ This was recognition that:

[In] Germany, under the Hitler regime, education had been admirably organized but had, nevertheless, produced disastrous results. It was absolutely necessary to make clear that education to which everyone was entitled should strengthen respect of the rights set forth in the Declaration and combat the spirit of intolerance.²

This concept of a right to be educated about human rights, has since been elaborated upon in numerous human rights treaties including the International Covenant on Economic, Social and Cultural Rights (Art 13), the Convention on the Rights of the Child (Art. 29) and the Convention on the Elimination of All Forms of Discrimination

Against Women (Art. 10). More recently, the UN has developed a number of initiatives to further promote human rights education (HRE), including, the UN Decade for Human Rights Education (1995-2004) and the subsequent World Programme for Human Rights Education (2005-ongoing). In the result, HRE is now a well established component of international law.

The significant attention paid to HRE in the international arena, is not mirrored within Australia. Empirical research undertaken with Melbourne secondary school teachers revealed that few teachers were incorporating education about human rights into their work.³ There are many reasons for this including:

- that teachers have not been trained in how to teach human rights – neither the content of human rights, not the pedagogical underpinnings;
- there is an absence of human rights in the mandated state curriculum;
- the phenomenon known as the ‘crowded curriculum’; and
- a lack of government mandate to the effect that HRE is an important issue for teachers.

Domestic human rights legislation is pivotal to addressing this last point. A statutory instrument such as the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Charter) sends a very clear message that the Government considers human rights are important. Furthermore, s 41(f) expressly provides that one of the functions of the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) is to “provide education about human rights and this Charter.” Thus, there is an edict, albeit in very general terms, from the Government, that Victorians should be educated about human rights. However, this is just the first step in a long journey towards HRE in schools. If human rights are going to form a genuine part of the educational experience of our students, it is the Department of Education that needs to take a ship role, rather than the VEOHRC. This is because there is systemic change that needs to occur before HRE can become embedded in classrooms, including, that teachers – existing and future – need to be appropriately trained in human rights, and HRE must become a core part of the mandated curriculum.

While it is important that the *Charter* includes a mandate about education, it is the very existence of the Charter that is likely to have the greatest impact on HRE in our schools. Comparative research on the nature and extent of HRE in secondary schools in Melbourne and Boston found that:

the [American] Bill of Rights has the effect of increasing HRE in schools in Boston by providing teachers with a domestic instrument on which to base their teaching of rights, but at the same time limits the content of HRE by restricting the education to the few rights set out in the Bill of Rights and by focusing the HRE on exclusively national issues to the exclusion of global human rights issues.⁴

Thus, having a local human rights Act has both positive and negative effects. On the one hand, it gives teachers something to ‘hang their hat on’ when it comes to HRE, rather than a ‘foreign’ treaty emanating from the UN, but at the same time it is likely to narrow the content of the HRE to what is contained in the human rights Act, which in the case of the Victorian *Charter* is only civil and political rights. However, it will be recalled that s.41(f) of the Charter provides for “education about human rights **and** this Charter.” It does not say education about human rights **in** the *Charter*. Thus, there is scope for teachers to use this provision as a catalyst for a discussion with students about what human rights have been included in the *Charter*, what human rights have been excluded (economic, social and cultural rights), and why this might be. In this way, HRE would not be restricted to only the civil and political rights in the *Charter*.

CONCLUSION

The process of mainstreaming human rights into the school curriculum is not one that can happen overnight. Significant preparatory work needs to be undertaken, including, training teachers, reforming the state mandated curriculum, and developing appropriate resources to assist teachers in their efforts to incorporate human rights into the classroom. The enactment of the Victorian *Charter* is a significant first step towards HRE becoming a part of the schooling experience of every Victorian child. A national human rights Act, were we to get one, would provide considerable reinforcement to the Victorian *Charter* in embedding education

VALE THE HONOURABLE JOHN HARBER PHILLIPS, FORMER CHIEF JUSTICE OF THE SUPREME COURT OF VICTORIA AND FOUNDING PATRON OF VWL

KRISS WILL, DEANNE WEIR, GEORGINA FROST, WENDY KAYLER-THOMSON AND LIZ BISHOP

about human rights into schools, and would likely motivate even more teachers to embrace HRE.

Aristotle once said that:

All who have meditated on the art of governing mankind, have been convinced, that the fate of empires depends on the education of youth.⁵

I would suggest that this could be adapted, to better suit modern society, by adding that the fate of empires depends on the education of youth **about human rights**. While Australia has much to be proud of, its track record regarding the treatment of marginalised groups such as Indigenous Australians and asylum seekers is not a pretty one. It is suggested that the single greatest achievement of a domestic human rights instruments – be it state or federal – is to act as a catalyst for promoting HRE, which, over time, will lead to the creation of a culture of human rights, where the risk of future human rights abuses is minimised. This was recognised in the Brennan Report released following a national consultation about how Australia could better protect and promote human rights.⁶ The Report contained 31 recommendations, the first of which was that “education be the highest priority for improving and promoting human rights in Australia.”⁷ The second recommendation also relates to HRE and includes a suggestion that: “The Federal Government develop a national plan to implement a comprehensive framework, supported by specific programs, of education in human rights and responsibilities in schools, universities, the public sector and the community generally.”⁸ The Report also recommends that Australia adopt a Federal Human Rights Act.⁹ If these recommendations are acted upon, we are likely to see a significant increase in HRE, which over time should produce a corresponding increase in the level of respect and protection of human rights in Australia.

Much has been written to laud the outstanding advocacy, leadership and scholastic skills and achievements of the former Chief Justice of Victoria with all of which we strongly concur. But it is his particularly strong voice in the advancement of women in the legal profession for which members of VWL will most favourably remember His Honour.

At the Women in the Legal Profession Seminar in November 1993 (which acted as the stimulus for the launch of VWL) His Honour introduced the Seminar noting that in May of that year for the first time in Victoria, by a majority of one, the number of female applicants for admission to practice outnumbered the number of males.¹ The Chief Justice gave some consideration to what sort of employment those women would obtain and whether it would give them real satisfaction and provide real opportunities for advancement before noting that the problems legal practice poses for many women are not to be classified as women’s problems. Involving as they do the concepts of equity, fairness and equality they are the problems of all.

“Prominent among those problems is the plain unpalatable fact that the proportion of women in our profession – and it has been very considerable now for at least fifteen years – has not been reflected by corresponding professional advancement. We have been wasting a valuable resource and we must stop doing that. We must convert negative attitudes into positive ones.”²

His commitment to converting those negative attitudes to positive ones did not stop at making speeches. It was far more palpable and concrete. His Honour would meet with us, at the many lunchtime meetings it took to grow an idea and a need into an organisation, with his packed lunch and contribute both ideas and support.

His Honour became both mentor and friend to many of the early members of the fledgling VWL. These friendships, and His Honour’s active interest in their lives and careers, continued well beyond his time as VWL patron.

Support was not only given to VWL in its infancy but also to the WBA. Chief Justice Phillips was among the several male members of the judiciary providing support to the WBA and, suggested the venue of their inaugural meeting in the Marriage Room at the former Mint.

As Founding Patron of VWL, His Honour particularly emphasised the ‘justice’ aims of the organisation and both proposed and was the inaugural speaker at the Lesbia Harford Oration. A committed socialist who worked for the underprivileged in Australia following her graduation from law in 1916, Lesbia Harford was also a poet and a musician. On that occasion, Chief Justice Phillips spoke of the case of Heather Osland, the battered women syndrome and the failure of the law which was developed to meet the needs and perspectives of men to adequately define ‘provocation’ as was required to encompass the experiences of women who were long term victims of abuse from their male partners.

It was not just the social justice commitment of Lesbia Harford that resonated with His Honour. Himself a poet, playwright and musician, many of Chief Justice Phillips’ contributions to VWL were artistic in nature. His Honour entertained us with song at the first VWL Christmas party at The Windsor, led us in a conga line at the LIV annual dinner and wholeheartedly celebrated the many achievements and festivities of the organisation. After his retirement from the Supreme Court bench, His Honour continued to support VWL as founding patron, and was always willing to offer advice and ideas.

The support of His Honour was instrumental in VWL being taken seriously as a force for change in the legal profession. His practical support and commitment to changing the position of women in the legal profession was profound and generous. VWL joins the legal community and his family in honouring an advocate for change and a champion of women and others outside the legal profession’s traditional ambit.

¹ Article 26 (2).

² Pierre Lebar (UNESCO delegate), UN Doc. SR.67/p.12.

³ Cerber, Paula From Convention to Classroom: the Long Road to Human Rights Education (2008) VDM Publishers, Germany.

⁴ Ibid, page 314.

⁵ www.wisdomquotes.com/002493.html accessed at on 22 September 2009.

⁶ Commonwealth of Australia National Human Rights Consultation Report, September 2009.

⁷ Ibid, page xxix.

⁸ Ibid

⁹ Recommendation 18, page xxxiv.

¹ The Hon John Harber Phillips, Chief Justice, Supreme Court of Victoria, Introduction “Women in the Legal Profession Seminar” 26 November 1993, Transcript p3

² Ibid, p 4.

VICTORIAN WOMEN LAWYERS SUBMISSIONS 2009

THIS YEAR, VICTORIAN WOMEN LAWYERS MADE SUBMISSIONS REGARDING A NUMBER OF IMPORTANT BILLS.

REVIEW OF THE *EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE ACT 1999*

SUBMISSION TO THE OFFICE FOR WOMEN

BACKGROUND

Victorian Women Lawyers (**VWL**) is an association formed in 1996 as an initiative of female solicitors in Victoria and has over 500 members. Its objectives include the advancement of women in the legal profession promoting law reform and understanding and supporting women's legal and human rights. It also operates as a network for information exchange, social interaction and continuing education and reform within the legal profession and the broader community.

VWL's submission to the review of the Equal Opportunity for Women in the Workplace Act 1999 (**the Act**) comprises:

- (a) An examination of the objects and coverage of the Act, as set out below; and
- (b) An endorsement of the submissions made by both the Law Council of Australia (**LCA**) and the Public Interest Law Clearing House (**PILCH**).

1. INTRODUCTION

1.1. Women have actively participated in the practice of law in Victoria for approximately eighty years. Over the past 20 years, female representation in undergraduate and graduate law programs has been more than 50% on a national basis.¹ While this gender balance is reflected in the junior levels of the profession, it is not the case at the more senior levels.

1.2. Despite having high levels of education and training including the ability to negotiate, there is inequality in pay² and career progression³ between men and women in the legal profession in Victoria and throughout Australia.

1.3. As noted in the Law Council of Australia's submission to the *Inquiry into Pay Equity*, comparison of the remuneration levels of male and female legal practitioners is complicated by the fact that men and women are not equally distributed across the legal profession. Female legal practitioners in general are younger and more recently admitted to practice than male practitioners. A greater number of female practitioners work part time or under a flexible workplace arrangement than male practitioners.

1.4. Men continue to hold a greater proportion of senior roles for which they receive higher levels of remuneration. Despite the fact that greater numbers of women than men have been graduating from Australian law schools over the past two decades, less than 20 % of all partners in law firms are female. If salaried partners are excluded, the number of female partners in law firms is as low as 15 per cent (13% in the ACT).⁴ In 2006 it was found that 56% of practising lawyers under the age of 40 were women, however at the age of 40 that number almost halved to around 25%.⁵

1.5. The pay inequity and limited career progression experienced by women in the legal profession is not unique to the legal profession; it is VWL's belief that it is reflective of the broader Australian work force.⁶

INTERNATIONAL LAW PRINCIPLES

1.6 VWL also suggests that the Office for Women be guided by international law principles. The Convention on the Elimination of Discrimination against Women (**CEDAW**), to which Australia is a party, specifically requires State parties to take 'all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights including *inter alia* the right to the same employment opportunities, and the rights to equal remuneration (Article 11).

1.7 CEDAW further provides guidance in the forms of Articles 1-5 which outline generally that women's human rights should be respected and upheld in respect to their equality before the law, irrespective of their religious, cultural, professional or relationship status. Article 5 (a) in particular highlights the requirement of State Parties to undertake measures with a view to 'the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'

1.8. The International Covenant on Economic, Social and Cultural Rights (**ICESCR**) is also instructive in relation to the rights to work. Australia ratified the ICESCR in 1975, thereby committing to take steps to fully realise the rights set out in the ICESCR. These rights include: (Article 7) the right to equal pay for equal work and equal opportunity for advancement, and (Article 6) the right to work. Article 3 of the ICESCR states the right to access the rights in the ICESCR, regardless of gender.

1.9 VWL believes that the spirit and principles behind these international law norms of non-discrimination should be prominent in an honest and complete consideration of the EOWW Act.

2. ENDORSEMENT OF SUBMISSIONS MADE TO THIS REVIEW BY THE PUBLIC INTEREST LAW CLEARING HOUSE AND THE LAW COUNCIL OF AUSTRALIA

2.1 VWL endorses the submission of PILCH entitled *Eliminating Barriers to Workplace Equality* and its recommendations.

In particular, VWL endorses PILCH's examination of wrongful gender stereotyping, and supports the recommendations for the elimination of wrongful gender stereotyping in ensuring equal opportunity for women in the workplace. Further, VWL supports PILCH's call, and in its own voice calls for the Australian Government to immediately implement the strategies and actions in *The National Council's Plan for Australia to Reduce Violence against Women and their Children*. VWL recognises that an abuse of certain rights can adversely affect all rights. It is well understood that violence against women is a significant barrier to employment and opportunities within employment for women.

2.2 VWL also endorses the Law Council of Australia's submission and its recommendations. In particular, VWL supports the proposition that the Equal Opportunity for Women in the Workplace Agency (**Agency**) should collaborate with the legal profession's professional representative bodies to educate legal firms as to their obligations at law. This

education should also raise awareness within the legal profession and the public in relation to gender bias and its current impact on women in the legal profession in terms of retention, progression and remuneration. VWL also agrees that the relationship between the Act and other legislative instruments, in particular the *Sex Discrimination Act*, should be clarified in relation to the concepts of special measures and principles of merit.

3. OBJECTS OF THE EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE ACT 1999: CONSULTATION QUESTIONS 2.1, 2.2 AND 2.3

Background

3.1 Parliament has the role of establishing effective legislation to address the needs of Australian society. The Act, the *Sex Discrimination Act 1984* (Cth) and the *Equal Opportunity (Commonwealth Authorities) Act 1987* were enacted to address the issue of discrimination and achieve substantive equality between the sexes in Australia.

3.2 In 2008 French J took judicial notice of the disadvantage experienced by women practitioners in the legal profession in *Victorian Women Lawyers Association Inc v Commissioner of Taxation*⁷ (VWL Case). The VWL Case concerned an application by VWL to the Australian Taxation Office to be exempted from the obligation to pay income tax. The exemption was sought on the basis that VWL is a charitable institution or an association established for community service purposes.

3.3 In its written submissions, VWL referred to the disadvantage of women in society and of women practitioners in the legal profession as a disadvantage so well understood it could be characterised as a social fact.⁸ The bench was persuaded that the disadvantage was a matter of common knowledge generally, within the meaning of section 144 (1)(a) of the Evidence Act 1995 (Cth). Indeed French J agreed that at this level of generality, the social fact of the historical and persisting disadvantage experienced by women in relation to their participation and career advancement within the legal profession could not be disputed.⁹

3.4 French J was asked to consider whether the advancement of women and women practitioners could accordingly be characterised as a public benefit. In answering, French J considered the objects of the Sex Discrimination Act.¹⁰ His Honour noted that, 'The legislation and the convention to which Australia is a party can be taken as indicative of a now long standing social norm or community value that attaches public benefit to the removal of barriers to the advancement of women, on an equal basis with men, in all fields of human endeavour, including participation in the professions and in public life'.¹¹

Recommendation

3.5 The Act preserves the merit principle (limiting the use of affirmative action) by providing in section 3(4) that it does not require an employer to take any action incompatible with the principle that employment matters should be dealt with on the basis of merit.¹² In contrast the Sex Discrimination Act is more broadly framed encompassing the notion of achieving substantive equality, so as to permit the use of quotas (affirmative action).¹³ It is clear that the objectives of equality of opportunity and treatment have not yet been achieved in Australia for women in the legal profession.

3.6 Given the current inequality of opportunity, VWL believes that the Act should incorporate special measures. This would be with a view and purpose of ensuring the substantive equality of men and women. It should be recognised that special measures should be temporary in nature, and such measures should be removed once substantive equality is achieved.¹⁴ Such special measures are particularly salient in the employment arena. VWL believes that special measures should be considered especially in relation to promotion of women to senior positions, such as on boards, to the judiciary, and to senior levels of law firms and government departments and bodies. While we acknowledge that selection for positions should be based on merit, we believe that in some circumstances, it may be appropriate to consider preferential treatment to a woman candidate on the basis of gender, in order to overcome inherent biases and prejudices which perpetuate disadvantage amongst women in the workplace.

4. COVERAGE OF THE EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE ACT 1999: CONSULTATION QUESTION 2.5.

Background

- 4.1 Employers covered by the Act include private sector companies with more than 100 employees and requires these organisations to implement programs to eliminate discrimination and contribute to the achievement of equal opportunity for women in the workplace. Organisations must lodge an annual report recording their performance against the required steps, and failure to lodge a report results in that organisation being named in Parliament and on the EOWA's website.¹⁵

Recommendation

- 4.2 The large majority of law firms in Victoria employ fewer than 100 employees and therefore have no reporting obligation under the Act. VWL believes to more effectively achieve equality of opportunity in Australia among smaller employer organisation and thereby effect cultural change within our society, the coverage of the Act should be expanded to include a greater number of organisations. The content requirement of the current form of report is long, complicated and imposes a high administrative burden to complete. Larger organisations usually have the resources available to them, i.e. human resource are more able to complete this reporting requirement. VWL believes organisations with fewer than 100 employees (say 50 to 100) should be required to submit a short report biannually. This report should include an organisational profile which addresses the employment matters set out in a simple pro forma
- 4.3 VWL acknowledges that larger law firms which have a reporting obligation under the Act, (many of which have received an Employer of Choice for Women citation¹⁶) and comply with that obligation usually provide more equitable and supportive working conditions for women.

- 4.4 Better working conditions and the Employer of Choice for Women citation provide those firms with a recruiting edge. VWL is concerned that within those law firms inequity in pay and lack of career progress exists and is due largely to under-representation of women at the partnership level. It is also noted that as these law firms are only required to report in relation to salaries of employees, their reports do not include partnership profit share which is primarily earned by men. Inclusion of this information would add weight to the existing evidence of the inequality of earnings between men and women in the legal profession.

¹ The Law Society of New South Wales, *After Ada: A New Precedent for Women in the Law*, 29 October 2002

² Law Society of New South Wales, 2007 Profile of the Solicitors of New South Wales, (December 2007), p35; 2008 Profile of Solicitors of NSW, 7 January 2009 prepared by the Law Society of NSW p 24; 2009 Member Survey Results prepared by the ACT Law Society p 7 to 8

³ 2008 Profile of Solicitors of NSW, 7 January 2009 prepared by the Law Society of NSW p 24; 2009 Member Survey Results prepared by the ACT Law Society p 6.

⁴ Anne Susskind, Billable Hours at Odds with Flexible Work Practices (2008) Law Society Journal 20; Mahlab Recruitment, *Private Practice Australia & International Survey* 2006; 2009 Member Survey Results prepared by the ACT Law Society p 6

⁵ A Paterson *Bendable of Expendable: Practices and Attitudes Towards Work Flexibility in Victoria's Biggest Legal Employers* Law Institute of Victoria and VWL 2006

⁶ Australian Bureau of Statistics, *Household Income and Income Distribution, 2008-03*, Catalogue No 6523.0, Canberra (2008). OECD, *Employment Outlook 2008* Edition, Summary ISBN 978-92-64-046337, page 3.

⁷ *VWL Association Inc v Commissioner of Taxation* [2008] FCA 983 (27 June 2008)

⁸ *VWL Association Inc v Commissioner of Taxation* [2008] FCA 983 (27 June 2008) at para 112

⁹ *VWL Association Inc v Commissioner of Taxation* [2008] FCA 983 (27 June 2008), para 116.

¹⁰ *Sex Discrimination Act 1984* (Cth), section 3.

¹¹ *VWL Association Inc v Commissioner of Taxation* [2008] FCA 983 (27 June 2008), para 122.

¹² Beth Caze, *The Ambiguity of Affirmative Action in Australia* (1998) 15(2) *Law in Context* 136, 155.

¹³ *Sex Discrimination Act 1984* (Cth), Section 7

¹⁴ See CEDAW Article 4, which states that temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination.

¹⁵ See <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹⁶ In 2009 the following firms received the EOWA Employer of Choice for Women citation Allens Arthur Robinson, Blake Dawson, Clayton Utz, Corrs Chambers Westgarth, Freehills, Holding Redlich (Lawyers & Consultants), Maddocks, Mallesons Stephen Jacques and Minter Ellison.

CONCLUSION

VWL welcomes the review of the Act and the Agency, as they are fundamental in championing equal opportunity for women in the workplace. While there has been some progress, our membership and our research inform us that in the legal profession, there are serious barriers to equal opportunity for women. VWL submits that the elimination of discrimination against women in all its forms is crucial in progressing toward substantive equality. VWL would be happy to provide further information in relation to this review, and we encourage the Office for Women to contact us with any questions.

Victorian Women Lawyers

23 October 2009

Victorian Women Lawyers Association Inc.

Administration: Tracey Spiller
GPO Box 2314V or DX 350
Melbourne, VICTORIA 3001
Tel: 9607 9390
Fax: 9607 9446
Email: tspiller@liv.asn.au

SUBMISSION TO THE HUMAN RIGHTS CONSULTATION

Victorian Women Lawyers Association is a non-governmental, voluntary association that promotes and protects the interests of women lawyers and engages with legal and social justice issues that affect women. We represent over 500 members, and more widely speak on behalf of all women in the legal profession.

In the main, we support and agree with the recommendations put forward in the submission 'A Human Rights Act for All Australians' authored by the Human Rights Law Resource Centre.

Human rights apply to all people, on the basis of their shared humanity. Women are entitled to have their human rights protected, and not be discriminated against on the basis of gender.

VWL recommends that the protection and promotion of human rights in Australia should not be purely a legislative initiative. VWL recommends that the government should plan, fund and implement, in connection with the educational, private and not-for-profit sectors, extensive training, education, awareness raising, reporting and monitoring in relation to human rights, and any human rights obligations resulting from any legislation. Cultural change must be encouraged in relation to respecting human rights in Australia.

VWL's principal submission is that Australia should enact a Human Rights Act which protects and promotes the human rights of all persons.

We wish to draw the Committee's attention to human rights problems that particularly affect women¹.

1. Homelessness: The census conducted in 2006 found more than 46 000 women were homeless. Women and their children are vulnerable to homelessness through relationship breakdown, domestic violence and sexual assault.
2. Violence: 1 in 3 women experience physical violence in their lifetime². Sexual assault, domestic violence and family violence, and the fear of such violence, impact upon a woman's right to participate socially, economically and culturally in life. VWL is particularly concerned about violence against

indigenous, migrant and refugee women who may face multiple challenges due to language, religious reasons, and little knowledge of available services.

3. Equal participation: Women experience barriers to participation in all sectors of society, but particularly in public life and the paid workforce. Discrimination, sexual harassment, and inflexible parental leave conditions are all concerns that limit women's participation. VWL is particularly concerned about the equal participation of indigenous, migrant and refugee women.
4. Income disparity between men and women: overall, as at May 2007, women earned 84c in income compared to every dollar earned by a male.³ This figure is based on average weekly ordinary time earnings. The lack of equal pay for equal work is still a problem faced by women. Our membership informs us that women lawyers are amongst those women whose earnings are less than their male counterparts who perform the same duties.

The rights defined in the International Covenant on Civil and Political Rights (ICCPR) should guide the rights in a federal Human Rights Act. Of particular significance to women are the following rights:

The right(s):

- to an adequate standard of living, including adequate food, clothing and housing
- to the highest attainable standard of physical and mental health
- to be safe and free from violence
- to education
- to work, and fair working conditions (including equal pay for equal work)
- not to be discriminated against on the grounds of sex, marital (or relationship) status or pregnancy
- to special protections for a reasonable time before and after childbirth, including paid leave or leave with adequate social security benefits for working mothers
- to take part in cultural life and the conduct of public affairs.

VWL acknowledges the rights and protections afforded by existing legislation such as the *Sex Discrimination Act 1984 (Cth)* and the *Workplace Relations Act 1996 (Cth)*, as well as comparable state legislation such as the *Equal Opportunity Act 1995 (Vic)*. The implementation of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* ("Charter") is an important contribution to human rights protections in Victoria. A national Human Rights Act would build on these existing protections and encourage a more holistic approach to human rights protection in Australia.

VWL urges the Federal Government to undertake reform in the area of human rights on a national scale. VWL believes that a national Human Rights Act would better protect and promote human rights, particularly for women. A national legislative scheme that runs similarly to the Victorian Charter could empower and oblige parliament to consider how the implementation of laws impact upon human rights. VWL sees this as particularly relevant in the context of workplace laws, superannuation and taxation laws and family law. Development of public policy and services would also be guided by human rights considerations. Decision makers in the public service would be obliged to consider a human rights compatible approach in their decision making. VWL also submits that any national Human Rights Act should include a mechanism for enforceable remedies for breaches of human rights.

VWL invites the Committee to contact the Assistant Convenor, Astrid Haban-Beer, to answer any questions in relation to our submission or for further input into a national human rights framework.

Astrid Haban-Beer
Assistant Convenor
15 June 2009, Melbourne.

¹ According to research by the Human Rights and Equal Opportunity Commission.

² Australian Bureau of Statistics, (2005) Personal Safety Survey, ABS Cat. No. 4906.0, Canberra: Commonwealth of Australia.

³ Australian Bureau of Statistics Year Book, 2003.

SUBMISSION TO THE AUSTRALIAN SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE INQUIRY INTO THE MARRIAGE EQUALITY AMENDMENT BILL 2009

INTRODUCTION

1. Victorian Women Lawyers is a voluntary association that promotes and protects the interests of women lawyers and engages with legal and social justice issues that affect women. We represent over 470 members and women in the legal profession more broadly.
2. VWL is strongly committed to the eradication of all forms of discrimination, including on the basis of sex, sexuality and gender identity. VWL advocates for equality and freedom from discrimination in all spheres, including the workplace, public and private life. VWL has previously advocated for the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people including a submission to the Attorney-General of Victoria endorsing the proposal to introduce a relationships register in Victoria in 2007.
3. VWL opposes the discrimination against LGBTI people currently contained in federal marriage laws and fully endorses the *Marriage Equality Amendment Bill 2009* for the reasons set out below.

MARRIAGE EQUALITY AMENDMENT BILL 2009

4. VWL fully endorses the objects of the *Marriage Equality Amendment Bill 2009* as set out in Clause 3 which are to:
 - a) remove from the Marriage Act 1961 discrimination against people on the basis of their sex, sexuality or gender identity; and
 - b) recognise that freedom of sexuality and gender identity are fundamental human rights; and
 - c) promote acceptance and the celebration of diversity.

REMOVAL OF DISCRIMINATION ON THE GROUNDS OF SEX, SEXUALITY OR GENDER IDENTITY

5. VWL calls for an end to all discrimination on the grounds of sex, sexuality or gender identity. VWL believes all people are entitled to equal treatment by the law and freedom from discrimination regardless of sex, sexuality or gender identity. This includes equal legal recognition of relationships and the right of two consenting adults to enter into civil marriage.
6. VWL believes that the *Marriage Equality Amendment Bill 2009* is an important step towards the removal of all discrimination against LGBTI people as it will allow marriage to occur regardless of sex, sexuality and gender identity, which is currently denied to same-sex couples under the *Marriage Act 1961*, following the Federal Government's amendments of 2004.
7. The Bill is also important in that it will reverse amendments made to the *Marriage Act 2004* which explicitly prohibit the recognition of same-sex marriages entered into under the laws of another country.

Equal Access to Relationship Rights

8. VWL commends the Federal Government for its recent amendments to federal laws which have finally removed discrimination against same-sex couples seeking access to financial and work related rights. However, LGBTI people still suffer discrimination at the hand of the Federal Government by virtue of the fact that they are unable to marry legally, or to have their legal marriage entered into in overseas jurisdictions recognised in Australia.
9. The current state of the law denies LGBTI people access to the relationship rights, entitlements, protections and responsibilities that marriage affords including the ability to immediately prove one's relationship status, rather than having to prove a relationship through a series of circumstantial criteria. This is particularly important in emergency situations, and also has much relevance in other spheres such as immigration. It is also important for same-sex partners because continued prejudice against same-sex relationships can lead to a denial of rights.

RECOGNITION THAT FREEDOM OF SEXUALITY AND GENDER IDENTITY ARE FUNDAMENTAL HUMAN RIGHTS AND INTERNATIONAL HUMAN RIGHTS JURISPRUDENCE

10. Freedom of sexuality and gender identity are fundamental human rights which should be promoted and protected by the Federal Government.
11. Australia is a state party to several international instruments under which it is obliged to ensure protection of the rights to non-discrimination and equality. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) definitively contain comprehensive prohibitions on discrimination, including sex and other status discrimination. Arguably this is more important for same-sex couples who still face discrimination, hostility and a lack of understanding from wider society about their relationships.
12. Article 2 (2) of ICESCR provides that state parties 'undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'
13. Article 2(1) of the ICCPR obliges state parties to respect and ensure the rights in the Covenant 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, nation or social origin, property, birth or status.'
14. VWL submits that these key principles of non-discrimination should be foremost in the Senate's reasoning in removing discrimination from the Marriage Act.
15. Article 26 of the ICCPR extends the prohibition against discrimination in all aspects of public life, both *de facto* and *de jure*. Article 26 provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

16. The right to equality is also protected under the Convention of the Elimination of all Forms of Discrimination against Women (CEDAW), to which Australia is a party.
17. The Marriage Equality Amendment Bill 2009 would redress the severe inequality that is currently the reality in relation to marriage. In accordance with our international obligations, and in the spirit of equality and anti-discrimination, voluntary marriage between a willing couple should be permitted and celebrated, regardless of sex, sexual identity and/or gender identity.

PROMOTION OF ACCEPTANCE AND THE CELEBRATION OF DIVERSITY.

18. The Federal Government has developed a comprehensive social inclusion agenda which includes a vision for Australia in which "all Australians feel valued and have the opportunity to participate fully in the life of our society". The Marriage Act as it stands is an overt legal barrier to a significant proportion of Australians fully participating in "the life of our society", including the family and friends of LGBTI people. The debate which surrounds same sex marriage is clear evidence of the enormous importance the institution of marriage holds for social groups around Australia. In addition to providing legal entitlements, marriage provides an opportunity for couples who value the institution to connect with their family, friends and wider society in a very meaningful and important way.
19. Recognition and celebration of relationships carries the ability to publicly acknowledge ongoing commitment, shared values and appreciation of the importance of family.
20. Conversely, a Marriage Act that overtly discriminates against same-sex couples sends a socially exclusionary message to same-sex couples and their families. It makes a clear statement about who is entitled to enjoy the social benefits of this highly valued institution. Government endorsed discrimination against LGBTI people encourages and lends legitimacy to other forms of discrimination and stigmatisation of the non-heterosexual community.
21. Not allowing LGBTI people to marry sends a message to society that same-sex couples are not equal. The *Marriage Act* continues to foster discrimination against same-sex partners as long as it prohibits same-sex marriage. Same-sex couples will continue to feel socially isolated and ostracized for as long as the Federal Government overtly discriminates against them.
22. Discrimination against the LGBTI community and same-sex relationships is already highly problematic. Despite advances and changing social attitudes, LGBTI people face stigmatisation, ridicule, fear of persecution and violence on a daily basis in some regions or social segments of Australia. It is not only LGBTI people who experience this, but also their families and friends, including the children of same-sex couples. The Government should combat these destructive attitudes by fully supporting the choices of LGBTI people including the choice to marry if they so desire.
23. Discrimination in marriage laws against other minority groups, such as mixed-race unions, has rightly been considered abhorrent and incompatible with fundamental human rights principles for some time now. Such discrimination would be considered entirely unacceptable as an official policy platform in relation to the relationships of other marginalized groups. The current position is therefore entirely contrary to the spirit of Australia's social inclusion agenda and to its aspirations of equality and a fair go.
24. Marriage is not a staid concept. It is an important social institution that has changed over time. As a legal concept, it is an important source of rights and recognition and thus legal entitlement to marriage should continue to change over time in accordance with social values and knowledge. Recent research indicates that 60% of Australians are in favour of same-sex marriage, including 64% of Labor voters and 50% of Coalition voters. Internationally, seven other nations allow same-sex couples to marry and more are considering allowing same-sex marriage.
25. VWL supports the *Marriage Equality Amendment Bill 2009* because it is an important step towards the removal of all discrimination against LGBTI people and will allow marriage to occur regardless of sex, sexuality and gender identity. *The Marriage Equality Amendment Bill 2009* provides an opportunity for the Federal Government to eradicate discrimination, promote substantive equality, encourage social inclusion of the LGBTI community and celebrate diversity in accordance with modern values. For these reasons and the reasons set out above, VWL strongly supports the *Marriage Equality Amendment Bill 2009* and would welcome the opportunity to comment further on this issue.

VWL COMMENT AND MEDIA 2009

VWL HAS COMMENTED PUBLICLY ON IMPORTANT ISSUES THROUGHOUT 2009.
BELOW IS A SNAPSHOT OF OUR ACTIVITIES FROM 2009.

Conferences

In January 2009 Jennifer Kanis presented a paper at a conference in Sydney entitled Elevating the Status of Women in Firms by Driving Cultural Change. Jennifer's paper was entitled "Confronting the myths and realities of flexible work practices". Jennifer discussed the VWL research into the experiences of women working flexibly in the legal profession and the factors for success.

In July 2009 Jennifer Kanis spoke at a conference in Melbourne entitled Advancing Women in Professional Services. Jennifer's paper was entitled "How flexible work practices can succeed in a full-time work environment" and she spoke about the opportunities and challenges facing women in the legal profession.

Laura Keily and Jennifer Kanis hosted a discussion forum at a law firm. Jennifer and Laura used VWL research and their personal experience to discuss the experience of flexible work in a law firm.

Media

The Victorian Government Barristers Briefing Report 2007-2008 was released in September 2009 and Jennifer Kanis provided the following comment to The Australian, parts of which were quoted in an article appearing on 18 September 2009.

"The 2007-2008 figures illustrate a worrying trend which is seen in other areas of the profession - despite an increasing number of women joining the Bar they are not progressing to senior roles. The number of junior women at the Bar is encouraging, but of great concern is that only 16 women barristers are Queen's or Senior Counsel and that, as a percentage of women at the Bar, this level has remained static for 10 years. This trend is also reflected in private practice where, despite there being equal numbers of women and men entering the profession for about 20 years, women are under-represented at partner level.

The report also confirms what our members tell us which is that women are not receiving the senior briefs.

Of greatest concern is the significant drop in the percentage of briefs to women from 53% in 2004/5 to 43% in 2007/8. This significant fall in percentage is certainly not reflective of a decreased number of women being available to accept briefs. It is important that the legal profession continues to address inequality, and Victorian Women Lawyers encourages the government sector to continue to lead the profession in briefing women in all areas of practice."

In November and December 2009, Astrid Haban-Beer, our incoming Convenor for 2010, made comments on 3AW radio in relation to the gender appearance survey.

Letter to LIV re Model Rules of Professional Conduct and Practice

Mr Danny Barlow
President of the Law Institute of Victoria

20 November 2009

Dear President,

Inclusion of an anti-discrimination Rule in the Law Council's Model Rules of Professional Conduct and Practice

The long-standing position of Victorian Women Lawyers (VWL) is, in summary, that conduct rules for legal practitioners should include an anti-discrimination rule, for the following reasons:

- Existing remedies for discriminatory conduct under both common law and specific anti-discrimination and harassment laws do not provide adequate processes or forms of redress for persons who are the subject of discriminatory conduct;
- Dealing with discriminatory conduct and harassment through the professional discipline processes could provide a more straightforward means of seeking redress;
- A complaint made through the disciplinary process need not necessarily be made by the victim of the discrimination;
- There is evidence that female practitioners are consistently remunerated less than male practitioners (even in respect of comparable work) and do not attain the same access to high value work and promotion as their male counterparts;
- The standing of the legal profession within the community at large and its unique role in the administration of justice necessitates that the profession lead by example with a clear statement that discriminatory conduct within the profession should be regarded as a breach of fundamental ethical standards (in addition to being in contravention of existing laws).

- The rule would serve to protect predominately women, junior practitioners and the vulnerable in our profession, in particular employed solicitors. The leaders of our profession have a responsibility to abide by and institute proper standards of conduct in legal workplaces.
- We note that the *Professional Conduct and Practice Rules 2005* do not provide similar provisions with respect to anti-discrimination and sexual harassment. However, paragraphs 8.51-8.54 of chapter 8 of the Good Conduct Guide for Victorian Barristers do provide similar provisions as do the majority of rules in other Australian jurisdictions.

Some legal professional bodies and individuals have expressed the view that an anti-discrimination rule should not be included on the basis that:

- There is extensive legislation and regulation addressing the issue;
- The inclusion of such a rule would not be of practical assistance to solicitors; and
- Discriminatory conduct would constitute a breach of draft Rules 4 and 5 relating to "Other Fundamental Ethical Duties" and "Dishonest and Disreputable Conduct".

It is the view of the National EOL Committee that such anti-discrimination rules ought be included in any national model conduct rules. VWL strongly supports EOL in this respect. We would be extremely disappointed should the anti-discrimination rule be left out and consider such an outcome would be a backward step in the advancement of women and minority groups within the legal profession.

Should you wish to discuss this matter, please do not hesitate to contact me on 9242 1304 or astrid.haban-beer@ags.gov.au.

Yours faithfully

Astrid Haban-Beer
Assistant Convenor
Victorian Women Lawyers

VWL MEDIA RELEASE

Friday 4 December 2009

The Law Council's 2009 Court Appearance Survey demonstrates that female representation at the Bar and in the higher courts, both in Victoria and nationally, remains significantly low.

Astrid Haban-Beer, Convenor of Victorian Women Lawyers (VWL), Victoria's peak organisation representing the interests of women lawyers in Victoria, says that the survey's findings prompt many questions about why so relatively few women choose to pursue a career at the Bar, and of those that do, why they are leaving and why women are missing out on a high proportion of briefs from private law firms.

The Victorian situation

The results show that Victoria's Bar is made up of only 421 women (22%) as opposed to 1488 males (78%). Of the 421 women, only 20 are Senior or Queen's Counsel compared to 274 males. These figures alone, are of concern.

In 2008 and 2009, almost half of the barristers signing the Victorian Bar roll were women, at 42 of a total cohort of 90 and 41 of a total cohort of 92, respectively. In 1999, just 18 of the 73 new admissions were women. Whilst we have seen a marked improvement over the last 10 years, we must be careful not to replicate the position existing in private practice, where we see over 50% of female law graduates but only a small percentage of females entering the higher ranks of the profession to senior associate and partnership level.

Most notably, Victoria was the only jurisdiction where the survey indicates that appearances by gender proportions were significantly different from the gender proportions at the Bar.

Regardless, the results still tell us enough about what is happening in our higher courts. In Victoria, male barristers appeared in 87% of matters surveyed, whereas they comprised 78% of the Bar. Females, while making up 22% of the Bar, appeared only 13% of the time. This did not accord with the national results which showed that male and female barristers appeared in the same proportions as they exist at the Bar (81% male, 19% female).

The results for Victoria only become more discouraging when we look at the number of hours women are on their feet in Victoria's higher courts (3.6 hours on average with total hours of 379) compared with their male counterparts (5.8 hours on average with total hours of 4004); and where those briefs are coming from. Private firms are briefing males in 88% of matters and women in 12% of matters. This is significant when we consider pay differentials. It is commonly known that rates on private firm briefs are higher than rates for any other briefing entity.

The Model Briefing Policy in Victoria has gone some way in ensuring that women are being briefed by panel firms in government matters. A similar reporting mechanism needs to be imposed on private firms when it comes to non-government matters.

VWL is committed to pursuing these matters in conjunction with its national body, Australian Women Lawyers.

For further enquiries, please contact, Astrid Haban-Beer, Convenor, Victorian Women Lawyers, at Astrid.Haban-Beer@ags.gov.au.

VWL ARTS LAW WINE AND CHEESE EVENING, 6 AUGUST 2009



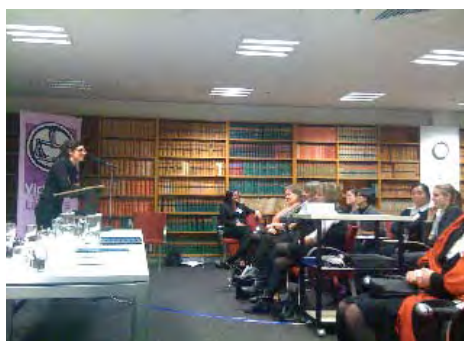
FROM LEFT: (VWL GUEST), KERRY DICKENSON-ROWE AND ASSISTANT CONVENOR ASTRID HABAN-BEER

On 6 August 2009, VWL members, law students and practitioners enjoyed an evening of Victorian wine and cheese in the surrounds of Melbourne's New White Gallery. Attendees were treated to a fantastic presentation by Robyn Ayres, Executive Director of the Arts Law Centre of Australia. Robyn outlined the work of Arts Law in providing legal services to the Arts community, as well as pro bono opportunities for practitioners.



ABOVE: ASTRID HABAN-BEER, GENERAL MEMBER KATE ASHMOR AND GALLERY OWNER MELANIE

VWL 'COMING TO THE BAR' EVENT



LEFT: BARRISTER CHRISTINE MELIS



2009 END OF YEAR CELEBRATIONS



TOP FROM LEFT: JENNIFER BOWDEN, SUSAN PRYDE, ASTRID HABAN-BEER, KATE ASHMOR, JENNIFER KANIS, CHRISTINE MELIS, ASTRID HABAN-BEER

BOTTOM FROM LEFT: AMANDA STEVENS, VWL STUDENT MEMBER, CHRISTINE MELIS, JENNIFER KANIS, ALINA HUMPHREYS, TRACEY SPILLER, PATRICIA ATHANASIADIS, MELANIE HODGE, JACINTA MORPHETT

JUSTICE COMMITTEE REPORT 2009

JACINTA MORPHETT, MELANIE HODGE



'CHANGING LANDSCAPE' BY FERN SMITH

ABOUT THE COMMITTEE

The Justice Committee undertakes activities designed to raise awareness of issues relating to social justice, particularly issues that involve women and the law. The Committee organises and hosts events, engages in law reform debate and liaises with the VWL Executive Committee to achieve its objectives.

Committee membership

Astrid Haban-Beer resigned her position as co-chair of the Justice Committee at the beginning of 2009 in order to focus upon her (then) role as co-chair of the Women Migrants Legal Information Project and also her role as Assistant Convenor of VWL this year. The Justice Committee extends its sincere gratitude to Astrid for her hard work during her time as co-chair of the Justice Committee. Astrid remains a valuable and active member of the Justice Committee.

Jacinta Morphett continued as co-chair and Melanie Hodge took up co-chair position with her for 2009. Continuing members of the Committee from 2008 were Astrid Haban-Beer, Eliza Garrett, Taboka Finn, Viv Waller, and Jane Berry. Justice also welcomed new members Claire Humble, Kaylene Hunter-Rawlings, Nora Baraka, Yagmur Cagrier, Emilia Michael, Megan Fitzgerald, Danielle Randall L'Estrange, Libby Penman, Emily Millane, Jenny Sharp, Patricia Athanasiadis, Ashnita Rozario and Samantha Perussich.

JUSTICE ACTIVITIES

The Justice Committee hosted a number of exciting events in 2009, as well as undertaking law reform and other justice related activities.

Pro Bono and Community Work Forum and Community Justice Award

The VWL Pro Bono and Community Work Forum took place at the Law Institute of Victoria on 21 May 2009. The event celebrated solicitors and law students undertaking community and pro bono legal work and the valuable contribution that their work makes to social justice. Three speakers, Mat Tinkler (PILCH), Marika Dias (Western Suburbs Legal Service) and Belinda Lo (Fitzroy Legal Service) presented on their experiences and gave participants information about how to get involved either through volunteer or pro bono work. Community Legal Centres were also invited to attend so that they could speak to potential volunteers.



TOP TO BOTTOM:
MAT TINKLER, BELINDA LO & MARIKA DIAS

The VWL Community Justice Award was also launched on the night. The Award is in recognition of a student or recently admitted lawyer who, on a pro bono or volunteer basis, demonstrates a commitment to issues related to women and justice. VWL has received a number of nominations and looks forward to announcing the winner at the 2010 Women's Achievement Awards.

Regional Sexual Assault Forum – Warrnambool, 21 August 2009

The Justice Committee hosts one regional Sexual Assault Forum per year in partnership with local service providers. The Forum aims to inform community practitioners such as lawyers, police officers, teachers, counsellors and health practitioners about issues surrounding victims of sexual assault who are seeking assistance and legal advice.

The Forum consisted of three presentations and was facilitated by Juliet Williams of Community Connections.

Helen Wilson, Manager of South-Western Centre Against Sexual Assault (CASA) informed the audience of the history of her organisation in Warrnambool and South West Victoria. The organisation came about in 1975 due to the efforts of many, including women's groups such as the Women's Electoral Lobby, Women Against Rape, as well as women in the public service, the police and the efforts of a local committee. She provided some illuminating and concerning statistics based on the case work of South-Western CASA, which showed the prevalence of sexual assault, particularly for vulnerable groups such as children and those with intellectual disabilities.

Munya Andrews, Victoria's only indigenous female barrister, gave a powerful presentation on the issues facing indigenous victims of sexual assault. She discussed endemic problems arising out of cultures of silence where victims feel unable to discuss their experiences and seek help. She also discussed further barriers to seeking assistance such as fear of persecution, retaliation, abandonment and disownment from communities.

The presentations were followed by an energetic question and answer session in. Audience members then continued their discussions more informally over a drink and snacks provided by VWL.



FAR LEFT CLOCKWISE:
CONVENOR ASTRID HABAN-BEER AND
JUSTICE COMMITTEE MEMBER KAYLENE
HUNTER; PRESENTER MUNYA ANDREWS,
BARRISTER; FACILITATOR JULIET
WILLIAMS, SOUTH WESTERN COMMUNITY
LEGAL CENTRE; PRESENTER DI
CHAMBERS, SOUTH-WESTERN CASA



Indigenous Student and Practitioner Engagement

VWL recognizes that indigenous practitioners are vastly under-represented in the legal profession, and believes that positive steps to redress this and encourage higher participation by the indigenous community will result in a richer and more representative profession. The VWL Justice Committee has therefore determined to actively encourage indigenous membership and to advocate for those members, particularly indigenous law students.

On 21 August 2009 Victorian Women Lawyers and Community Connections South West Community Legal Centre jointly hosted the 2009 regional Sexual Assault Forum in Warrnambool. The event was held at the South West TAFE and kindly sponsored by Organisational Excellence Australia and South West TAFE. The aim of the Sexual Assault Forum was to inform participants about issues impacting on victims seeking assistance and legal advice in relation to sexual assault. The Forum also had a focus on the specific issues facing the indigenous community. The audience consisted of a wide variety of local professionals including solicitors, teachers, community workers, counsellors and other health care professionals.

Kaye Smith and Mini Lucht of the Aboriginal Family Violence Prevention and Legal Service gave a very informative presentation about the services of that organisation, including court support, legal representation and outreach services. They also discussed some ongoing education and support projects run by AFVPLS including Sisters Day Out, a workshop day where indigenous women can enjoy socialising and pampering, whilst also having organisation representatives such as lawyers and counsellors available to discuss their services.

The Justice Committee continued efforts to involve indigenous law students in its activities in 2009 in order to provide them with an opportunity to expand their networks, join VWL committees and learn more about legal practice. Complimentary memberships were extended to a number of indigenous law students and indigenous practitioners. The Justice Committee also has an ongoing relationship with the Victorian Indigenous Lawyers and Law Students Association, Tarwirri.

CONTINUES ON NEXT PAGE >>

JUSTICE COMMITTEE REPORT 2009

Sexual Assault Forum Melbourne – Vulnerability and Sexual Assault

The Melbourne Sexual Assault Forum runs annually with the aim of exploring a particular theme that is relevant to sexual assault law, often with a focus on matters requiring reform in order to increase access to justice for victims. This year's Forum was kindly

hosted and sponsored by Corrs Chambers Westgarth.

The Forum speakers were Viv Waller (Waller Legal), Tricia Malowney (Victorian Women with Disabilities Network), Janine Dillon (Office of

the Public Advocate) and Jenni Lee (Seniors Rights Victoria) on issues facing victims who are disempowered and vulnerable, such as children, the elderly, those with disabilities and those subject to guardianship.



FAR LEFT TO RIGHT:
 ROW 1: PRESENTER JENNI LEE, SENIORS RIGHTS VICTORIA; PRESENTER TRICIA MALOWNEY, VICTORIAN WOMEN WITH DISABILITIES NETWORK; PRESENTER JANINE DILLON, OFFICE OF THE PUBLIC ADVOCATE;
 ROW 2: L-R, PRESENTERS JANINE DILLON, JENNI LEE, VIV WALLER, TRICIA MALOWNEY; JUSTICE COMMITTEE CO-CHAIR JACINTA MORPHETT
 ROW 3: JUSTICE COMMITTEE MEMBERS (L-R) ASH ROZARIO, ELIZA GARRETT, JACINTA MORPHETT; PRESENTER VIV WALLER

Law Reform Activities

The Justice Committee prepared the following law reform submissions on behalf of VWL in 2009:

1. Submission to the Federal Government supporting a paid parental leave scheme as recommended by the Productivity Commission (April 2009)
2. Submission to the National Human Rights Consultation Committee (15 June 2009)
3. Submission to the Australian Senate Legal and Constitutional Affairs Committee Inquiry into the *Marriage Equality Amendment Bill* 2009 (28 August 2009)

Women Migrants Legal Information Project

The Women Migrants Legal Information Project (WMLIP) has been gaining momentum throughout the year. The project aims to produce material in several different languages and mediums (including 'roadshow' style community



presentations) informing women migrants about key legal issues in a simple and educative format. The themes that will be conveyed relate to work rights, marriage laws, trafficking, and general information about the legal system.

In the second half of the year, the Law Foundation provided us with two excellent student interns, Yagmur Cagrier from La Trobe University and Emilia Michael from Monash University. Yagmur and Emilia brought to the project a wealth of knowledge regarding migrant issues and women's rights.

Consultations were held with a wide variety of community, private and non-governmental organisations in relation to legal issues most relevant to women migrants. Consultations revealed a real need for basic legal information, in several languages including languages for newer communities such as the Chaldean and Sudanese communities. Yagmur and Emilia have begun the drafting process, which will be continued by the committee. The committee is in the process of applying for funding to produce the publications, which we hope will be launched in the second half of 2010.

The committee has a number of members bringing expertise from both VWL and different organisations, including Stancea Vichie from the Good Shepherd Social Justice Network, and long-time VWL member, Norma Ford. In 2009, two new co-chairs took over from Melanie Hodge and Astrid Haban-Beer. They are Caitlin Tierney and Sylvia Florescu. Caitlin has been doing much work with refugee communities, and also represents



FROM LEFT:
YAGMUR CAGRIER &
EMILIA MICHAEL

this committee and VWL on the Victorian Legal Assistance Forum (CALD Working Group). Caitlin and Sylvia look forward to progressing the project in 2010, and welcome new members at any time.

JUSTICE 2010

The Justice Committee will farewell Jacinta Morphet as co-chair at the end of 2009 as she goes on maternity leave in 2010. The committee extends its very sincere gratitude for Jacinta's hard work as co-chair through 2008 and 2009, and more generally as an active, dedicated and passionate member of the committee since 2006. We wish her all the very best for the coming year.

On behalf of VWL, Jacinta and Melanie congratulate all members of the committee on an excellent year of activities and thank them for their valuable contribution.

The co-chairs of the Justice Committee in 2010 will be Melanie Hodge and Patricia Athanasiadis. Please contact Melanie at Melanie.Hodge@justice.vic.gov.au or Patricia at Patricia.Athanasiadis@supremecourt.vic.gov.au if you are interested in joining the Justice Committee, participating in any of our events or contributing to law reform submissions.

MEMBERSHIP COMMITTEE REPORT 2009

BETH HILTON-THORP

The Membership Committee works to:

- Ensure effective communication with members;
- Broaden and expand the membership base;
- Maintain information about the demographics of VWL membership;
- Obtain feedback from members about what they want from their organization and their level of satisfaction; and
- Pursue initiatives for the benefit of VWL members.

In 2009 membership continued to be healthy with a total of 488 members as at 31 October 2009. This compares favourably with a total membership of 429 at the same time in 2008 - an increase in membership of 59 (~14%) (Table below refers). There was a significant increase in the number of associate members – principally student members but a decrease in the number of ordinary members.

MEMBERSHIP	2009	2008
ORDINARY	341	411
ASSOCIATES	147	18
TOTAL	488	429

We continue to be primarily an association of practitioners from the CBD.

This year the Victorian Council of Law Students' Societies did not hold its Annual Careers Fair so we were not able to take advantage of this opportunity to connect with students. VWL participation in the Careers Fair provides an excellent opportunity to promote VWL in the early stages of student life. We hope to participate in the Careers Fair in 2010. We have a large number of student members through our very successful mentoring scheme coordinated in 2009 by Kate Ashmor.

In 2010 it is hoped that the Membership Committee will be able to be more productive. It would be good to address the following issues:

1. the reasons for the decrease in the number of ordinary members and failure to renew membership in 2009 though this was balanced by attracting new members;
2. the number of student members and whether they maintain their membership from year to year;
3. ways to engage better with practitioners who are not CBD based;
4. strategies for expanding the membership base.

It will also be a year for:

1. undertaking a full review of the membership information, tidying up inconsistencies and ensuring that we have a proper base line of information; and
2. updating the demographic profile of the membership and analysing the information that we collect from members.

Please contact Beth Hilton-Thorp at jthorp@bigpond.net.au if you are interested in becoming involved in the Membership Committee.

**“IN 2009 MEMBERSHIP
CONTINUES TO BE
HEALTHY WITH A
TOTAL OF 488 MEMBERS
AS AT 31 OCTOBER 2009”**

NETWORKING COMMITTEE 2009

SUSAN PRYDE AND VERITY SHEPHERDSON

The Networking Committee aims to provide opportunities for professional friendships, support and exchange of ideas.

In keeping with this goal, in 2009 the Committee organised and hosted a number of events which provided opportunities for VWL members and other female lawyers to socialise and build networks. Many VWL members and non-members enjoyed the functions organised by our hard-working Committee members.

Events organised by members of the Networking Committee in 2009 included:

- VWL Members and Guests' night, which this year included an entertaining and thought provoking speech by barrister Rachel Doyle, SC;
- The Mental Health Discussion during Law week
- The Coming to the Bar event, organised in conjunction with the Women Barristers Association; and
- The AGM and End of Year Celebration and Drinks.

Please see the photos pages for photos of these events.

We have welcomed a number of new members to the Committee this year, and a huge amount of work has been done by members, both new and old. The enthusiasm, imagination and hard work of our members has meant that our events have run smoothly and successfully.

Thank you to each of the members for their hard work and generosity:

- Mandy Bede
- Jessica Bevacqua
- Catherine Boston
- Claire Carrucan
- Eilish Cooke
- Maria Conti
- Kate Francis
- Ruth Hamnett
- Lydia Kinda
- Amelia Macknay
- Anna Robertson
- Tanya Skvortsova
- Jennifer Taylor

Our thanks also go to Tracey Spiller for once again providing fantastic support to us throughout the year.

In addition, Verity Shepherdson would like to give special thanks to her co-chair, Susan Pryde, who resigned from her position as co-chair at the end of 2009. Susan has been a longstanding member of the Committee, and has organised countless events over the years. She has always been enthusiastic and creative, and happy to organise events no matter how complex, and how busy she is in her professional life. She has been a wonderful co-chair.

SPONSORSHIP REPORT 2009

JACKIE GILLIES

“VICTORIAN WOMEN LAWYERS WOULD LIKE TO THANK ITS SPONSORS FOR THEIR ONGOING SUPPORT THROUGHOUT THE YEAR.”

The work of Victorian Women Lawyers would not be possible without the ongoing support of its principal sponsor: the Law Institute of Victoria and its major sponsors: Allens Arthur Robinson, Blake Dawson, Clayton Utz, Maddocks, Mallesons Stephen Jaques, Middletons and Minter Ellison.

In 2009, our Convenor, Jennifer Kanis, and Sponsorship Officer, Jackie Gillies, met with the managing partner or key VWL relationship partner of each sponsor firm to discuss the year ahead and VWL's planned agenda. During the year, VWL profiled a key female lawyer from each sponsor firm in our monthly e-newsletter *Women Keeping in Touch*.

Our Executive members attended several sponsor firms to talk about VWL initiatives. This year, the following major sponsor firms also hosted a VWL event on their premises:

- Middletons hosted the launch of the *2009 Mentoring Program*;
- Clayton Utz hosted the *Do You Manage? Litigation Workshop*; and
- Maddocks hosted the *Do You Manage? HR Professionals Workshop*.

In addition, special thanks also go to the following firms who supported and hosted these events:

- Corrs Chambers Westgarth hosted two VWL interns involved in the *Women Migrants Legal Information Project* at their offices.
- Maurice Blackburn hosted the *VWL Christmas drinks and AGM*; and
- Corrs Chambers Westgarth also hosted the *Melbourne Sexual Assault Forum*.

Victorian Women Lawyers would like to thank its sponsors for their ongoing support throughout the year. We look forward to working alongside these firms during 2010 and beyond.



JACKIE GILLIES

WORK PRACTICES COMMITTEE REPORT 2009

ALINA HUMPHREYS AND AMANDA STEVENS

The primary focus of the Work Practices Committee (WPC) is to explore, critically evaluate and publicly comment on the state of flexible working arrangements for lawyers in Victoria.

The flagship project of the WPC in 2009 was the provocatively titled "*Do you Manage?*" project, which focused on the management of lawyers working flexibly.

By way of background, in November 2005, VWL released a report titled "*A 360° Review: Flexible Work Practices. Confronting myths and realities in the legal profession.*" This report identified that flexible work arrangements could be more successful if adequately supported and managed by the partner or manager.

The WPC decided this was an area that needed further examination and input from the partners themselves. This led to a collaboration of all VWL's sponsor firms in attending separately targeted workshops for partners in transactional practices, partners in litigation practices and HR Managers.

The workshops covered the types of flexible work practices, the impact of flexible work practices on the business, the challenges and difficulties of managing flexible work arrangements, critical success factors and the benefits of having flexible work practices.

The outcomes of these workshops, together with a "pro forma" flexible work plan, legislative obligations regarding flexible work practices and case studies of flexible work arrangements are currently being consolidated into a report which will be released in early 2010. Special thanks, in particular, to Alice MacDougall for her passionate commitment to this project.

In 2009, the WPC (led by Georgina Frost and Astrid Haban-Beer) prepared a submission to the Office of Women in relation to the Equal Opportunity for Women in the Workplace Act (the EOWW Act). The WPC's submission suggested, among other things, that the EOWW Act incorporate "special measures" to ensure substantive equality of men and women, with those "special measures" to be removed once such equality is achieved.

In 2009, the WPC, together with the Centre for Applied Social Research (CASR), successfully applied to the Victorian Law Foundation for a grant of approximately \$5000 to scope the potential and design of a large scale attrition study of lawyers in private practice in Victoria. The study will gather qualitative and quantitative data on the reasons why lawyers leave private practice in Victoria. The "*scoping project*" will conclude shortly and the WPC hopes that the study proper will commence in 2010.

The WPC was also pleased to see that the 2009 Legal Services Panel Contract included a reporting requirement regarding flexible work practices, this was the outcome of a clearly persuasive 2008 submission by the WPC to the Victorian Attorney-General.

Special thanks to each member of the WPC for their hard work and dedication during 2009. If you are interested in being involved in the WPC, please contact Alina Humphreys at alina.humphreys@asic.com.au.



ALINA HUMPHREYS



Victorian Women Lawyers

GPO Box 2314V or DX350
Melbourne VIC 3001
Email: info@vwl.asn.au

Ph: +61 3 9607 9390
Fax: +61 3 9607 9558

Website: www.vwl.asn.au