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## SISTERS DOWN UNDER: WOMEN LAWYERS IN AUSTRALIA

Linda J. Kirk<sup>†</sup>

### INTRODUCTION

The story of women lawyers in Australia is one of a struggle for recognition. As in other parts of the world, Australian women lawyers have encountered considerable resistance to their desire to have their value recognised and their differences accepted. This Essay tells the story of women lawyers in Australia, past and present. It provides an overview of the struggles of the early women pioneers who faced and overcame the legal barriers that barred them from legal practice in all States of Australia. Through their determination, they achieved the reforms necessary to enable women to practise the law on the same terms as men. However, these struggles to remove the exclusivity of men in legal practice did not overcome the firmly embedded male standard in the profession. It is for this reason that, although women now enter the legal profession in Australia in near equal numbers to men, they are disproportionately represented in the low-status and low-paid areas of the law. This Essay considers the reasons for this gender segmentation and the invisible barriers that continue to hinder women's desire to achieve equality in the Australian legal profession. It will explore the legal framework in which women encounter these obstacles and the growing recognition in Australia of the barriers women lawyers face and the strategies that are being adopted to address this gender inequality and thereby assist women to take their place as equals in the legal profession.

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## I. ENTRY INTO THE LEGAL PROFESSION

At the turn of the twentieth century, women were barred from legal practice in all six States of Australia. Although some women had enrolled in law degree programs in anticipation of the necessary legislative reforms, it was not until 1905 that the first woman was admitted to practice in Australia. At common law, women were not recognised as eligible for admission, and therefore it was necessary for them to lobby to ensure that the necessary legislative amendments were made to enable women to enter the legal profession on the same terms as men. However, in doing so, these early women pioneers encountered considerable resistance from the all-male hierarchy who considered it inappropriate for women to enter into a profession traditionally reserved for men.

In Western Australia in 1900, a prominent barrister and King's Counsel, R.A. Haynes, requested the permission of the Barristers' Board to have his daughter Edith articled to him under the Legal Practitioners Act of 1893 (W. Austl.).<sup>1</sup> Although it approved Edith Haynes's application as a law student, the Board warned her that it could not guarantee her later admission to practice.<sup>2</sup> In 1904, the Board refused her request to be admitted to the intermediate examinations, stating that "women were not eligible for admission under the Act."<sup>3</sup> In response, Edith Haynes obtained an order nisi calling upon the Board to show cause why a writ of mandamus should not be issued directing it to admit her under the Barristers' Board Rules. The case was argued by her father before the Supreme Court of Western Australia on 9 August 1904.<sup>4</sup> The Full Court held that the words "every person" in the Act did not include women and that accordingly women could not be admitted as legal practitioners. Justice Burnside stated that "the right of a woman to be admitted is a misnomer . . . . The Common Law of England has never recognised the right of women to be admitted to the Bar."<sup>5</sup> His Honour was "unable to find any instances where any

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1. Geraldine Byrne, *Just Dears: Western Australia's First Women Lawyers*, 21(4) W. AUSTL. L. SOC'Y J. 13 (1994). The Barristers' Board constituted under the Legal Practitioners Act supervised and regulated the admission of legal practitioners. *Id.*

2. *Id.*

3. *Id.*

4. *Id.*

5. *In re Edith Haynes*, 6 W.A.L.R. 209, 212-13 (1904).

right ha[d] been conferred.”<sup>6</sup> He saw admission to legal practice as “a privilege which has been conferred by the Courts originally, and then been regulated subsequently by Statute from almost time immemorial, and which has been confined to the male sex.”<sup>7</sup> His Honour was “not prepared to start making law.”<sup>8</sup> However, he stated that “[w]hen the Legislature in its wisdom confers the right on women, then we shall be pleased to admit them.”<sup>9</sup> Justice McMillan was concerned about the possibility of women becoming judges if they were admitted to the Bar. He stated that the “change [was] of such importance that it should be made, and in fact can only be made by the Legislature.”<sup>10</sup> Edith Haynes was never admitted to practice.

In 1903, Victoria became the first Australian State to permit women to enter legal practice. In 1894, Donald Melville, a Member of the Victorian Legislative Council, attempted unsuccessfully to amend the Legal Profession Practice Act of 1891 to allow for the admission of women to the profession.<sup>11</sup> Consequently, when the first woman, Flos Greig, entered the University of Melbourne Law School in 1897, she was aware that she would not be eligible for admission upon completing her degree. However, by the time of her graduation, she had initiated an amendment to allow women to enter the legal profession.<sup>12</sup> On 17 February 1903, John Mackey, a Member of the Legislative Assembly and lecturer in Equity at the University of Melbourne, introduced the Women’s Disabilities Removal Bill to the Victorian Legislative Assembly, which became known as the “Flos Greig Enabling Bill.” The Bill raised little debate when introduced into the Parliament, although one Member expressed his concern that a woman “might become Crown Prosecutor, Chief Justice or Acting Governor.”<sup>13</sup> The only significant resistance occurred when the Bill was mistakenly believed to be related to the suffrage debate.<sup>14</sup> On 28 March 1903, Flos Greig

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6. *Id.* at 214.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 212.

11. Jill Ewing, *Laying the Foundation Stone for Legal Women*, 66(3) LAW INST. J. 159 (1992) (Vict., Austl.).

12. *Id.*

13. *Id.*

14. *Id.*

became the first woman to graduate from the University of Melbourne Law School. The Bill was passed five days later.<sup>15</sup> The Legal Profession Practice Act stated: "No person shall by reason of sex be deemed to be under any disability for admission to practice as a barrister and solicitor of the Supreme Court, any Law or usage to the contrary withstanding."<sup>16</sup> Victoria became the first Australian State to permit women to be admitted to legal practice, and Flos Greig was the first female to be admitted to practice in Australia on 1 August 1905. Other States soon followed the Victorian initiative. An amendment to the Legal Practitioners Act of 1904 (Tas.) and the Legal Practitioners Act of 1905 (Queensl.) enabled women to be admitted to practice in Tasmania and Queensland. The first woman to be admitted in Queensland was Agnes McWhinney in December 1915, and the first woman to be admitted in Tasmania was Helen McPhee in February 1935.<sup>17</sup>

For other women such as Ada Evans, who had graduated from the University of Sydney in 1902, the delay in introducing the necessary legislative amendment to enable women to enter the legal profession in New South Wales effectively excluded her from legal practice. However, through her determination, she paved the way for all women who were to follow. Her application to the Supreme Court of New South Wales to be registered as a student-at-law after her graduation was refused on the ground of absence of precedent.<sup>18</sup> She persevered in her efforts to enter legal practice by seeking admission to the English Bar, but again received the standard reply that there was no precedent.<sup>19</sup> It was then suggested that she seek judicial review of the matter, but after exploring the possibility of success, she abandoned this course.<sup>20</sup> Her efforts were then directed to lobbying the New South Wales Attorney-General to introduce a bill to Parliament to enable women to be admitted to practice.<sup>21</sup> A bill was

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15. *Id.*

16. Legal Profession Practice Act (1903) (Vict., Austl.).

17. Ruth Teale & Joan O'Brien, *Women in Law: A Study of Women Lawyers in New South Wales 1902-45*, in AUSTRALIAN WOMEN AND THE LAW (SEMINAR PAPERS) 1, 3 (1978).

18. Bek McPaul, *A Woman Pioneer*, 22 AUSTL. L.J. 1, 2 (1948).

19. *Id.*

20. *Id.*

21. *Id.* Women's organisations provided her with support to bring the law of New South Wales into line with amendments in other States. Members of the Feminist Club of New South Wales joined Ada Evans in her initial deputation to the Attorney-

introduced to Parliament in the 1916 Parliamentary Session, but was shelved after the second reading. In 1918, another bill was introduced to Parliament, and eventually the Women's Legal Status Act of 1918 was assented to on 21 December 1918.<sup>22</sup> To comply with the Barristers' Admission Rules, Ada Evans was required to register as a student-at-law for two years. Finally, on 12 May 1921, Ada Evans was admitted to practise as a barrister of the Supreme Court of New South Wales.<sup>23</sup> She was offered work within days of her admission, but refused to accept it on health grounds, family commitments, and her involuntary nineteen-year absence from the law. She wished to ensure that she did not undermine women's standing in the profession by a "show of incompetence."<sup>24</sup>

In other States, the resistance by the male hierarchy to the prospect of women entering the legal profession was reflected in the parliamentary debates surrounding the legislative amendments that made women eligible for admission. In South Australia, although the Language of Acts Act of 1872 provided that in every Act of Parliament all words of the masculine gender also included the feminine, it did not mention the rules of court that referred only to the masculine gender. The South Australian Parliament soon took steps to ensure that the restriction on women entering legal practice was removed by enacting the Female Law Practitioners Act of 1911, which guaranteed that women could be admitted as legal practitioners on the same basis as men. The Act provided that "[n]otwithstanding anything contained in any Act or any Rules of Court . . . any woman shall be entitled to be admitted to practise as a barrister, attorney, solicitor, or proctor of the Supreme Court, on complying with the Rules of Court."<sup>25</sup> In the course of the parliamentary debates it was noted that, whereas there were "competent and estimable" women doctors, it was not legal for any woman to practise as a lawyer in South Australia, even though there had been female legal practitioners in New Zealand since 1896 and in Victoria

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General Mr. Hall, which led to the introduction of a bill in the 1916 Parliamentary Session. Gail Griffith, *The Feminist Club of NSW 1914-1970: A History of Feminist Politics in Decline*, 14(1) *HECATE* 56, 56-57 (1989).

22. McPaul, *supra* note 18, at 2.

23. *Id.*

24. *Id.*

25. Female Law Practitioners Act (1911) (S. Austl.).

since 1903.<sup>26</sup> However, some members were of the view “that the appearance of women practitioners in the Courts would not be in some respects desirable.”<sup>27</sup> It was noted that “many objectionable matters had to be dealt with in the Law Courts, and it was thought that it might be inconsistent with the modesty of women that they should be mixed up with objectionable cases.”<sup>28</sup> However, “it would not be necessary for women to have anything to do with such matters” as they “would not be required to take up phases of legal work that would be unbecoming to them as women.”<sup>29</sup> It was thought that there would not be much objection from the legal fraternity should the Bill become law. The Honourable B.A. Moulden concluded: “Like chips in porridge, they won’t do much harm.”<sup>30</sup> The Female Law Practitioners Act of 1911 was passed, and on 20 October 1917 Mary Kitson became the first woman to be admitted to practice in South Australia.

In Western Australia, Edith Cowan, the first female member of Parliament, introduced the Women’s Legal Status Bill to the Parliament in 1923.<sup>31</sup> However, again, there was resistance from her male colleagues to this legislation which sought to place women on equal footing with men in the law. In the course of debate on the Bill following the second reading, the Honourable Mr. Latham argued that although he supported the second reading, he did not know whether it was “a step in the right direction to try to bring about equality of the sexes.”<sup>32</sup> As far as he was concerned “[w]omen have more important functions to perform than to enter the professional world. They are the custodians of our race for a start.”<sup>33</sup> The Honourable Mr. Underwood thought that women “ought to be compelled to marry.”<sup>34</sup> The Honourable Mr. Troy was “sorry that women [were] entering into spheres to which they are aspiring” and that it was “a pity that women should be brought into sordid competition with men. Men are the rougher creatures . . . made

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26. S. AUSTL. PARL. DEB. (LEG. COUNCIL) 535 (1911).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Melanie Naylor, *Women in the Law*, 21(4) W. AUSTL. L. SOC’Y J. 6 (1994).

32. *Id.* (quoting 69 W. AUSTL. PARL. DEB. 1378 (1923)).

33. *Id.*

34. *Id.* (quoting 69 W. AUSTL. PARL. DEB. 1390 (1923)).

for the hurly burly of life, whereas the rightful place for a woman is in her home with her children."<sup>35</sup> However, the Act was passed, and on 20 May 1930 Alice May Cummins became the first woman to be admitted to practice in Western Australia.

The views expressed at the time of the entry of women into legal practice in Australia were similar to those expressed in other countries. The idea of "separate spheres" for men and women and "differentiated gender roles" reinforced the belief that the legal profession was "for men only."<sup>36</sup> The idea of "lawyer" was considered male in law and in the minds of most members of society. Consequently, the male standard was the ideal underlying legislation that resulted in admission of females to practice. It was accepted that there was "no reason why women with the ability and who were prepared to undergo the examinations and qualify themselves, just as male students had to, should not be permitted by law to do so."<sup>37</sup> In this way, the legislative amendments confirmed the idea of lawyer as male at the same time that they permitted women who conformed to the "male lawyer" standard to be admitted to the legal profession.<sup>38</sup> The admission of women to the legal profession "represented a formidable challenge to male exclusivity in the profession, but one which did not fundamentally challenge the existing male standard."<sup>39</sup> Women succeeded in becoming lawyers in Australia, but only by accepting their admission on male terms. The "invisible" constraints of patriarchy remained firmly in place.

## II. IMPACT ON THE LEGAL PROFESSION

By 1947, the number of women lawyers in Australia represented 2.4% of all practising lawyers in Australia, increasing to 3.9% in 1961, 7.5% in 1976, 11.4% in 1981, and 25.1% in 1991.<sup>40</sup> There was also an increase in women's numbers in law schools during this period. Until the 1970s, fewer than one in five law graduates were women, but by 1987 the

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35. *Id.* (quoting 69 W. AUSTL. PARL. DEB. 1390 (1923)).

36. Mary Jane Mossman, "Invisible" Constraints on Lawyering and Leadership: The Case of Women Lawyers, 20 OTTAWA L. REV. 567, 583 (1988) (referring to the Canadian legal profession).

37. S. AUSTL. PARL. DEB. (LEG. COUNCIL) 535 (1911).

38. Mossman, *supra* note 36, at 584.

39. *Id.*

40. Sharyn Roach Anleu, *Women in the Legal Profession*, 66(3) LAW INST. J. 162, 164 tbl. 2 (1992) (Vict., Austl.) (citing Australian Bureau of Statistics).



proportion of women law graduates rose to almost one-half at some law schools,<sup>41</sup> and in 1994 women comprised one-half of the student population in Australian law schools.<sup>42</sup> This steady increase in women's participation has not, however, resulted in women assuming equal representation in the higher echelons of the profession. Despite apparently equal opportunities, women lawyers tend to be concentrated in lower-paying, less prestigious employment with fewer opportunities for promotion than men.

### A. Occupational Profile

Although little empirical research has been undertaken in Australia, recent studies show that women lawyers have significantly different occupational profiles than men.<sup>43</sup> In a study conducted by the Law Institute of Victoria in 1990, it was found that female law graduates "were significantly less likely than males to be currently working in a position of an essentially legal nature."<sup>44</sup> It found that women were "more likely to be working outside the legal profession, to be temporarily absent from the workforce or to be permanently retired."<sup>45</sup> Female graduates were more likely to be employees in private practice, corporate lawyers, and academics, while male graduates were significantly more likely to be barristers and partners in private practice.<sup>46</sup>

In 1992, a report of the House of Representatives Standing Committee on Legal and Constitutional Affairs noted that women have not progressed through the legal profession in proportion to their numbers.<sup>47</sup> Women are dramatically underrepresented in legal partnerships in Australia. The most recent statistics of women who are partners in a legal practice show that in New South Wales only 8.13% of all partners in law firms are

41. *Id.* at 163 tbl. 1.

42. AUSTRALIAN LAW REFORM COMMISSION REPORT, 69(2) EQUALITY BEFORE THE LAW: WOMEN'S EQUALITY 176, ¶ 1 (1994) [hereinafter WOMEN'S EQUALITY].

43. LAW SOCIETY OF NEW SOUTH WALES, GETTING THROUGH THE DOOR IS NOT ENOUGH (1993) [hereinafter GETTING THROUGH THE DOOR]; LAW INSTITUTE OF VICTORIA, CAREER PATTERNS OF GRADUATES (1990) [hereinafter CAREER PATTERNS OF GRADUATES].

44. CAREER PATTERNS OF GRADUATES, *supra* note 43, ¶ 2.3.4.

45. *Id.*

46. *Id.* ¶ 2.3.16.

47. HOUSE STANDING COMM. ON LEGAL AND CONST. AFFAIRS, HALF WAY TO EQUAL: REPORT OF THE INQUIRY INTO EQUAL OPPORTUNITY AND EQUAL STATUS FOR WOMEN IN AUSTRALIA ¶ 4.1.5 (1992).

women.<sup>48</sup> In Victoria the figure is 7.86% and in Queensland 9%.<sup>49</sup> Of solicitors admitted to practice in 1981 in Victoria, 55% of the men became partners, but only 22% of the women became partners.<sup>50</sup> Of those who enter partnerships in the first five years of practice, 11% are women and 89% are men.<sup>51</sup> As women have made up at least 20% of graduating lawyers since the 1970s and have comprised 30-40% of Australian law graduates for the past decade, a directly proportional representation would lead to a much higher rate of partnership among women.<sup>52</sup>

### B. Attrition

It is clear that many Australian women are dissatisfied with their career prospects and progress in the law and leave the legal profession. A study conducted by the Law Society of New South Wales in 1993 revealed a high attrition rate for female solicitors within the first five years of practice.<sup>53</sup> Law Institute of Victoria records indicate that in 1988, 12% of women, but only 6% of men, failed to renew their practising certificates.<sup>54</sup> The high attrition rate of female solicitors in the first five years of practice has been attributed to women leaving private practice to pursue careers in the public sector, community services, nonlegal professions, and in the home.<sup>55</sup> More flexible working hours, maternity leave, and availability of part-time work are major factors that influence women lawyers to leave private practice and join the Australian public service.

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48. Janet Fife-Yeomans, *Women Partners Break Legal Ground*, THE AUSTRALIAN, July 13, 1994, at 4.

49. *Id.* Figures are unavailable for the other States because similar surveys have not been conducted.

50. AUSTRALIAN LAW REFORM COMMISSION DISCUSSION PAPER 54, EQUALITY BEFORE THE LAW ¶ 7.6 (1993) [hereinafter EQUALITY BEFORE THE LAW] (citing V. Marles, *Law Firms and Affirmative Action* (1992) (unpublished L.L.M. thesis)).

51. LAW INSTITUTE OF VICTORIA, WOMEN IN THE LEGAL PROFESSION SEMINAR, TRANSCRIPT OF PROCEEDINGS 8 (1993).

52. See Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. ENQUIRY 289, 307 (1989).

53. GETTING THROUGH THE DOOR, *supra* note 43, at 8, tbl. 5.

54. CAREER PATTERNS OF GRADUATES, *supra* note 43, ¶ 1.1.

55. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.11.

### C. Segregation

As is the case in virtually every country where women practise law,<sup>56</sup> in Australia women are disproportionately represented in the lower-paying, less prestigious spheres of the profession. The study of graduates conducted by the Law Institute of Victoria in 1990 confirmed that a greater proportion of male graduates specialise in business law, civil litigation, property law, criminal law, and taxation. Men made up the greater proportion of those who aspired to become judges and Queen's Counsel. By contrast, women were more likely to specialise in administrative law, welfare and family law, and aspire to be senior academics and legal aid lawyers.<sup>57</sup> A higher percentage of women expressed interest in becoming solicitors rather than barristers.<sup>58</sup>

The consequences of this career concentration in particular areas of the law are both financial and professional. Women's areas of practice are less financially rewarding and lower in status than the male-dominated areas of the profession. The Law Institute of Victoria study showed that women were less likely than their male counterparts to earn incomes in excess of \$50,000.<sup>59</sup> Australia-wide figures indicate that 72% of women lawyers earn less than \$50,000, compared to 48% of men.<sup>60</sup> These figures are mirrored in studies conducted in other countries that show that women are disproportionately represented amongst those in the lower-earning bracket of the legal profession.<sup>61</sup> The overall picture that emerges is that women lawyers in Australia face segregation in particular areas of practice, low status, and lower-income levels than their male counterparts.<sup>62</sup>

56. Menkel-Meadow, *supra* note 52, at 306.

57. CAREER PATTERNS OF GRADUATES, *supra* note 43, ¶ 2.3.16.

58. *Id.* ¶ 3.3.5. Of the 1400 barristers practising in New South Wales, only 115 are women. EQUALITY BEFORE THE LAW, *supra* note 50, ¶ 7.8 (citing SYDNEY MORNING HERALD (May 14, 1993)).

59. CAREER PATTERNS OF GRADUATES, *supra* note 43, ¶ 2.3.17.

60. KEYS YOUNG SUBMISSION TO NSW MINISTRY FOR THE STATUS OF WOMEN, RESEARCH INTO GENDER BIAS AND WOMEN WORKING IN THE LEGAL SYSTEM 3 (1994).

61. Mary Jane Mossman, *supra* note 36, at 586.

62. Carrie Menkel-Meadow, *The Comparative Sociology of Women Lawyers: The "Feminization" of the Legal Profession*, 24 OSGOODE HALL L.J. 897, 912 (1986).

## III. THE "INVISIBLE" CONSTRAINTS

A. *Gender Stereotyping and the Legal Culture*

In Australia, the entrenched stereotype of what constitutes a successful lawyer reflects the male standard. The study conducted by the New South Wales Law Society in 1993<sup>63</sup> noted that law firms in Australia have a "specific culture which . . . represents the ideals, customs, personalities, backgrounds, relationships and skills of their membership. That culture reveals itself in terms of the practices and values it develops in its members, including management style, forms of communication, ethics, reward systems, promotional criteria and performance standards."<sup>64</sup> The prevailing male culture in Australian law firms looks for and expects aggression and competitiveness from practitioners, irrespective of whether those qualities achieve better results. A pervasive sexism values and understands women by reference to a standard that is deemed to be universal, but that in fact is only male.<sup>65</sup> The masculine culture of the legal profession results in systemic discrimination against women practitioners.<sup>66</sup>

The study also noted that recruitment, selection, and promotion procedures in the legal profession present particular problems for female legal practitioners in Australia. "Assessment of merit and suitability may be consciously or unconsciously influenced by conformity to accepted stereotypes relating to social and educational background, by established networks of patronage and by accepted views of what constitutes commitment to the demands of the organisation."<sup>67</sup> The "stereotypical view" that a woman's career will be interrupted by parenting responsibilities can affect recruitment decisions and opportunities for promotion. Similarly, "[d]efinitions of 'merit' relying on criteria such as a history of unbroken employment can discriminate against women who have had periods out of the work force due to child bearing."<sup>68</sup>

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63. GETTING THROUGH THE DOOR, *supra* note 43, at 3.

64. *Id.*

65. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.21.

66. Systemic discrimination occurs when practices that have a disparate impact upon women are absorbed into the institutions of the legal profession.

67. GETTING THROUGH THE DOOR, *supra* note 43, at 3.

68. *Id.*

The study identified that it is the belief that “women are better able to deal with ‘emotional matters’ and less able to deal with ‘harder issues’ [that] has led to a consistent over-representation of women in practice areas considered to require greater sensitivity and soft negotiations, such as family law, employment law and mediation.”<sup>69</sup> However, these areas are also those that are considered by the profession as having low status and have consistently lower charge-out rates. Women who practise “in these areas have to work longer hours with higher case loads” to achieve budgets equivalent to their male colleagues.<sup>70</sup> In a profession preoccupied with budgets, these unrealistic work expectations contribute to women’s lack of progression through the ranks of law firms.

In submissions received by the Australian Law Reform Commission in its reference *Equality Before the Law*,<sup>71</sup> women lawyers reported numerous individual experiences of having to conform to “masculine defined codes of conduct which exclude them from equal participation with men.”<sup>72</sup> Other women are “deterred from social activities because of sexist conversation or boys’ club rules.”<sup>73</sup> Social customs and habits exclude women as much as sexist attitudes.<sup>74</sup> For example, for a young female practitioner to go for a drink after work with her male superior is not viewed in the same light as if a male counterpart were to do so. The male culture of the profession provides a hostile and exclusive environment for women lawyers. This “affects their

69. *Id.*

70. *Id.* at 4.

71. WOMEN’S EQUALITY, *supra* note 42. In February 1993, the federal Attorney-General commissioned the Australian Law Reform Commission to undertake a comprehensive review to determine whether women receive equality from the legal system. The task of the Commission was to identify areas of inequality or bias against women and to suggest solutions. The terms of reference included a review of all areas of law within the power of the Federal and State Parliaments, and all law, both statutory and common law. The Commission conducted a series of discussions, meetings, and conferences in all capital cities and in a number of regional centres in Australia with the community and with legal practitioners, judges, and academics. It received a record number of submissions on a wide variety of issues. One matter under consideration by the Commission was equal participation in the legal profession.

72. *Id.* ¶ 9.21.

73. *Id.*

74. *Id.*

willingness to stay in the profession, and their likelihood of advancing to senior levels of the profession.”<sup>75</sup>

### B. Family Responsibilities

The entry of large numbers of women into the legal profession in Australia has exposed the dilemma of balancing work and family demands. Women are subject to differing expectations and choices in relation to work and family.<sup>76</sup> The fact that these “choices” are required to be made only by women reveals the hidden assumptions about the nature of legal work and societal roles for men and women.<sup>77</sup> Australian surveys indicate that women experience competing demands from work and family life in their legal careers. In the Law Institute of Victoria survey, 94% of female graduates, compared to 22% of male graduates, reported that they had been involved in the care of their children. In addition, 92% of female respondents, compared to 15% of males, thought that their careers would be interrupted for more than three months because of the birth of a child.<sup>78</sup>

Not only do women bear the vast majority of child rearing responsibilities, they do so in occupational environments designed by and for men. It is not uncommon for solicitors in Australian law firms to be expected to work from 8:00 a.m. until late in the evening six days a week. In other words, the working conditions of private practice are designed to accommodate the full-time breadwinner (usually male) who has accessibility to the domestic labour of his spouse or another low-paid woman. If women take on child-rearing responsibilities, they are seen as “unprofessional” because they “have to leave at 5:00 pm to collect their children from childcare and are not available to work at weekends.”<sup>79</sup>

The decision by many women lawyers to combine work and family responsibilities is viewed by most law firms as a personal one and worthy of little institutional support. Law firms in private practice have been slow to adapt to the reality of workers with family responsibilities. In-house child care, flexible work

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75. *Id.*

76. Mary Jane Mossman, *Lawyers and Family Life: New Directions for the 1990's (Part I)*, 2 FEMINIST LEGAL STUD. 61, 71 (1994).

77. *Id.* at 73.

78. CAREER PATTERNS OF GRADUATES, *supra* note 43, ¶¶ 2.4.7, 3.3.12.

79. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.11.

practices, and generous leave provisions are, if offered, negotiated at an individual level and rarely, if ever, made available to all female staff.<sup>80</sup> The Australian Law Reform Commission found that part-time work is rarely available in law firms in Australia,<sup>81</sup> and when it is offered, the "undue emphasis placed on the total revenue brought into the firm by each worker contributes to a hostile environment for part-time workers. Regardless of high productivity on days worked, part-time workers are made to feel unwelcome and are less likely to be promoted than equally qualified full time workers."<sup>82</sup>

The inflexibility of law firms in accommodating family responsibilities is justified on various grounds. Many clients and colleagues object to the inconveniences and the apparent lack of commitment of employees who work nonconventional hours. Although no lawyer can be available to service clients twenty-four hours a day due to, for example, interstate trips or business lunches, inaccessibility related to family obligations carries a "special stigma."<sup>83</sup> There is evidence to suggest that reluctance to accommodate women's demand for parental leave and flexible working conditions is not driven by client demands, but rather imposed by members of the profession themselves.<sup>84</sup> Many clients accept the reality of modern working life and many of them have flexible work practices at their organisations. Often it is the culture of the profession and the male definition of commitment that is the major obstacle to the introduction of these entitlements in law firms.

### C. *Discrimination and Sexual Harassment*

Discrimination on the basis of sex exists in Australia in the recruitment and promotion practices of many law firms. It is

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80. Australian law firms are introducing initiatives such as work-based child care, working from home, and other flexible work practices on a very small scale. To date, very few have a child-care policy that operates for all women rather than a few selected female partners. In the public sector, there has been a greater acceptance of the need for child care and there are initiatives within a range of government sectors to provide options such as reservation of child-care places and school holiday programs. There is a need for these entitlements to be introduced in smaller private practices in which the majority of women lawyers are employed in Australia.

81. *Id.* ¶ 9.12.

82. *Id.*

83. Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1185 (1988).

84. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.12.

evident that women in private practice are at greater risk of experiencing discrimination and have more limited avenues for redress than women in the public sector.<sup>85</sup> Submissions received by the Australian Law Reform Commission reported that some employers fail to comply with anti-discrimination laws and that only token regard is given to these laws in relation to recruitment and promotion.<sup>86</sup> In the recruitment process, women lawyers experience discrimination by way of inappropriate and irrelevant questions being asked of them in interviews. A survey of Australian National University law students who had attended summer clerkship interviews revealed that there was a significant difference between the types of questions asked of male and female interviewees.<sup>87</sup> A great number of female respondents reported that they were questioned about their "future reproductive and child rearing plans."<sup>88</sup> In contrast, male applicants were asked "conversational" questions, "particularly about sporting interests."<sup>89</sup> In a similar survey of law students of the University of New South Wales, 19% of female students indicated that they had been asked inappropriate questions in summer clerkship interviews, the most common being whether they had any intention of having children in the future. This question was asked of 27% of female compared to only 3% of male interviewees.<sup>90</sup>

In the promotion process in most Australian law firms, there is very little in the way of well-defined criteria against which solicitors can be measured. That which does exist, although unwritten, often is based on a male definition of commitment. For example, long hours spent at work, a high number of billable hours, client relationships (including socialising with clients), and marketing of the firm are all important for advancement. The question of staff salaries is a matter of great confidentiality, and there is often little parity between the salaries of male and

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85. *Id.* ¶ 9.2.

86. *Id.* ¶ 9.6.

87. *Id.* ¶ 9.7. In Australia, a summer clerkship program is conducted in all States. Law students in their final or penultimate year are employed by law firms during the three-month summer break from University. Gaining a summer clerk position is regarded as one of the best methods of securing employment on the completion of a law degree, and there is intense competition for the positions.

88. *Id.*

89. *Id.*

90. *Id.*



female employees of equivalent experience. Frequently, salaries and promotion are based not so much on past performance, but future potential. This can result in systemic discrimination against women who are often thought likely to leave the firm to have children or at least have a period of interrupted employment in the future. Firms often reward males in their early years of practice so as to safeguard against losing them to a competitor. Women, on the other hand, are often left to prove themselves before they are adequately recognised in terms of promotion and remuneration.

Sexual harassment is a barrier to women's full participation and integration into many areas of the legal profession in Australia.<sup>91</sup> The Employee Industrial Relations Section of the Law Institute of Victoria and Feminist Lawyers has received a number of reports from articled clerks and solicitors who have experienced unwanted comments, teasing, and jokes of a sexist nature, either from a client or another lawyer.<sup>92</sup> A survey of summer clerks from the Australian National University Law School reported instances of sexual harassment by supervising partners.<sup>93</sup> The Women Lawyers' Association of Western Australia has documented six cases of sexual harassment. In all but one case the woman left her employment.<sup>94</sup> Sickness and absenteeism is often related to harassment and discrimination in the workplace.<sup>95</sup> Unfortunately, there has been little investigation into the extent of sexual harassment in the legal profession, and no other Australian survey has asked respondents about sexual harassment. In light of surveys in the United States and Canada, which indicate that up to one-third of women lawyers have experienced unwanted sexual advances, comments, or teasing,<sup>96</sup> there is an urgent need to make these inquiries in Australia.

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91. EQUALITY BEFORE THE LAW, *supra* note 50, ¶ 7.14.

92. Linda White & Rebecca Borden, *Women in the Profession*, 67(7) LAW INST. J. 625 (1993). Feminist Lawyers is a group of female solicitors in Victoria.

93. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.8.

94. DAVID MALCOLM, REPORT OF THE CHIEF JUSTICE'S TASK FORCE ON GENDER BIAS 81 (1994) [hereinafter REPORT OF THE CHIEF JUSTICE'S TASK FORCE].

95. LAW SOCIETY OF NEW SOUTH WALES, EQUAL EMPLOYMENT AND PROMOTION POLICY 2 (1993).

96. CANADIAN BAR ASSOCIATION, TOUCHSTONES FOR CHANGE: EQUALITY, DIVERSITY AND ACCOUNTABILITY 72 (1993); Mark Hansen, *9th Circuit Studies Gender Bias*, 78 A.B.A. J. 30 (1992).

## IV. THE LEGAL FRAMEWORK

A. *Discrimination and Sexual Harassment*

The Sex Discrimination Act of 1984 (Cth.) is an act of the Federal Parliament and is the principal act on gender equality in Australia. The Act provides that direct and indirect discrimination on the grounds of sex, marital status, or pregnancy is unlawful in specified areas of public life, including the workplace.<sup>97</sup> The Act also prohibits sexual harassment<sup>98</sup> and provides that dismissal on the ground of family responsibilities is unlawful.<sup>99</sup> In addition to the Sex Discrimination Act, each State and Territory of Australia (except Tasmania) has anti-discrimination legislation.<sup>100</sup> The various State and Territory anti-discrimination laws cover a number of grounds of discrimination within the same Act, including discrimination on the ground of sex.

These laws all provide redress for an individual, or in some cases a group, subjected to discrimination on a ground specified by the Act.<sup>101</sup> The Sex Discrimination Act provides for investigation and conciliation of complaints of unlawful conduct under the Act.<sup>102</sup> Complaints that are not resolved or cannot be resolved by conciliation are referred by the Sex Discrimination Commissioner to the Human Rights and Equal Opportunity

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97. Sex Discrimination Act of 1984 (Cth.) §§ 5-7, 14-27. Direct discrimination is any policy or action that discriminates overtly on the basis of sex, marital status, or pregnancy. *Id.* §§ 5(1), 6(1), 7(1). Indirect discrimination occurs when an apparently gender-neutral rule or policy has very different effects on women and men, and one group is disadvantaged by the operation of the effect of the rule. *Id.* §§ 5(2), 6(2), 7(2).

98. *Id.* §§ 28A-L.

99. *Id.* § 7A.

100. Anti-Discrimination Act of 1977 (N.S.W.); Equal Opportunity Act of 1984 (S. Austl.); Equal Opportunity Act of 1984 (W. Austl.); Anti-Discrimination Act of 1991 (Queensl.); Discrimination Act of 1991 (Austl. Cap. Terr.); Anti-Discrimination Act of 1992 (N. Terr.). These acts generally have the same framework and concept of equality and contain similar provisions, although some of the Acts have wider provisions and a more active role for the Commissioner. AUSTRALIAN LAW REFORM COMMISSION REPORT 69(1), EQUALITY BEFORE THE LAW: JUSTICE FOR WOMEN ¶ 3.7 (1994) [hereinafter JUSTICE FOR WOMEN].

101. *Id.* ¶ 3.8.

102. Sex Discrimination Act of 1984 (Cth.) §§ 50(1), 52. Complaints are made to the Human Rights and Equal Opportunity Commission, which must refer the matter to the Sex Discrimination Commissioner who may inquire into the matter and try to effect a settlement by conciliation.

Commission for a hearing at which the complainant is required to establish that unlawful discrimination has occurred.<sup>103</sup>

The Australian Law Reform Commission recognised that the Sex Discrimination Act is an important measure in addressing discrimination against women in Australia,<sup>104</sup> in particular, "in redressing complaints of discrimination in employment and of sexual harassment."<sup>105</sup> The procedures provided for by the Act are seen as "less expensive, less formal and less intimidating or threatening than the traditional adversarial process."<sup>106</sup> Those who predominantly use the procedures available under the Sex Discrimination Act are young women (between fifteen and twenty-four years of age) who are employed in low-status positions.<sup>107</sup> Professional women in Australia, including women lawyers, rarely use either the Sex Discrimination Act or its State equivalents. The reason for this is said to be a "fear of victimisation and a negative impact on their career[s]."<sup>108</sup> One of the deficiencies of the Act is that the Sex Discrimination Commissioner has very limited authority to investigate discriminatory practices without a complaint. As a consequence, the practices of Australian law firms rarely undergo scrutiny, and there is little evidence of the extent to which firms comply with anti-discrimination laws.

### *B. Recommendations for Reform*

In Part I of its report, *Equality Before the Law*, the Australian Law Reform Commission noted the deficiencies of the Sex Discrimination Act. In particular, it noted the inadequacy of the complaint-based system provided by the Act in addressing systemic discrimination. The Commission recommended that the Sex Discrimination Commissioner be allowed to initiate investigations into matters that appear to be unlawful under the Act.<sup>109</sup> This would enable the Commissioner to initiate an

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103. *Id.* § 57(1).

104. JUSTICE FOR WOMEN, *supra* note 100, ¶ 3.9.

105. *Id.*

106. *Id.*

107. *Id.*

108. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.24.

109. JUSTICE FOR WOMEN, *supra* note 100, ¶ 3.3. The Sex Discrimination Commissioner would have power to obtain information and documents and to direct persons to attend a compulsory conference.

investigation into the practices of law firms.<sup>110</sup> In such a case, the Commissioner would be required to resolve the matter with the firm on a confidential basis. In attempting to settle the matter, the Commissioner could recommend measures that should be implemented by the firm so that discriminatory practices and policies are eliminated.<sup>111</sup>

The Commission further recommended that the Act be amended to allow the Sex Discrimination Commissioner to set standards respecting recruiting, promotion, staff education, and complaint and discriminatory practice response procedures. The Commission also recommended strategies for addressing structural issues and workplace culture that allow discrimination to persist.<sup>112</sup> After a self-initiated investigation or an investigation requested by a person or organisation, the Commissioner would formulate standards and recommend them to the Attorney-General for consideration.<sup>113</sup> Under the Act, it would be unlawful to contravene a standard declared by the Attorney-General.<sup>114</sup>

If implemented, these recommendations would go a long way in overcoming the structural obstacles that women lawyers face in Australia. In particular, the power of the Sex Discrimination Commissioner to initiate investigations into law firm compliance with the Act without the need for an individual complaint would overcome the fear of victimisation many women lawyers now have should they speak out about the discrimination they experience. Furthermore, the power of the Commissioner to formulate standards would make a marked difference in the power of women to change a male-dominated profession that denies the existence of discrimination.

### C. *Affirmative Action*

The Sex Discrimination Act (Cth.) is supplemented by the Affirmative Action (Equal Opportunity for Women) Act of 1986 (Cth.). The Act requires employers of more than one-hundred employees "to develop and implement measures to secure the

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110. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.25.

111. JUSTICE FOR WOMEN, *supra* note 100, ¶ 3.40.

112. *Id.* ¶ 3.43.

113. *Id.* ¶ 3.44. The Commission recommended that such standards be laid before both Houses of Parliament within fifteen days of formulation for consideration. *Id.*

114. *Id.* ¶ 3.4.

advancement of women within their organisations."<sup>115</sup> As the Australian Law Reform Commission has noted, the Act is designed "to prevent discriminatory practices before they result in complaints under the [Sex Discrimination Act] or the State and Territory anti-discrimination legislation."<sup>116</sup> Under the Act, employers are required to submit periodic progress reports. In the past, the only sanction for failing to comply with the obligations imposed by the Act was being named in the Federal Parliament for failure to submit a report or for submitting an inadequate report. More recently, compliance with the Act has become a prerequisite to eligibility for government contracts for goods and services, including legal services.<sup>117</sup>

Currently, the majority of women lawyers in Australia are unprotected by affirmative action legislation because they are employed in law firms that employ less than one-hundred employees.<sup>118</sup> Only fifty-two law firms in Australia have more than one-hundred employees.<sup>119</sup> Research has indicated that the large firms comply only minimally with their obligations to eliminate discrimination against women.<sup>120</sup> A study of the eleven largest law firms in Melbourne, Victoria stated that this was a result of the lack of enforcement powers of the Affirmative Action Agency. The study also indicated that law firms fail even to acknowledge that a problem exists. The firms' strategies were

115. Affirmative Action (Equal Opportunity for Women) Act of 1986).

116. JUSTICE FOR WOMEN, *supra* note 100, ¶ 3.4.

117. *Id.* ¶ 3.4. In October 1994, a large Victorian law firm, Arthur, Robinson & Hedderwicks, was named in Federal Parliament for failing to comply with its obligations under the Act.

118. In a recent review of the effectiveness of the Act, the Affirmative Action Agency decided against lowering the threshold of the application of the legislation to cover employers with less than one-hundred employees because "it would strain the limited resources of the Agency and the capacity of small employers to implement effective affirmative action programs." The review, however, drew attention to the fact that there is currently no consideration by the Affirmative Action Agency of the quality of affirmative action measures implemented by relevant employers. The Agency concluded that while 95% of employers submit a report, "the standard achieved by most employers in the development of their program is too low to have made any substantial impact on the statistical profile of women's employment." JUSTICE FOR WOMEN, *supra* note 100, ¶ 3.5 (citing AFFIRMATIVE ACTION AGENCY QUALITY AND COMMITMENT: THE NEXT STEPS: THE FINAL REPORT OF THE EFFECTIVENESS REVIEW OF THE AFFIRMATIVE ACTION (EQUAL OPPORTUNITY FOR WOMEN) ACT 1986 103 (1992)).

119. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.38.

120. *Id.* (quoting V. Marles, *Law Firms and Affirmative Action* (1992) (unpublished LL.M. thesis).

found to be "indefinite in nature" and the principal course of action was "to review" or "to consider."<sup>121</sup> The study concluded that it is "highly unsatisfactory" that the Act merely requires an employer to "indicate whether it has ensured that women are not discriminated against" and to indicate the steps it is taking to eliminate discrimination, because this allows an employer to "remain blind to the real statistical picture, assert a position of non-discrimination and thereby satisfy their legal obligations."<sup>122</sup>

#### D. Role of Professional Associations

In Australia, the legal profession is largely self-regulatory. Each State and Territory of Australia has a law society for solicitors and a bar association for barristers.<sup>123</sup> Legislation in each State and Territory of Australia imposes upon the profession itself the obligation to determine entry standards, make rules of conduct, and investigate complaints.<sup>124</sup> Professional associations are also involved in the provision of practical legal training, continuing legal education, and specialist accreditation.<sup>125</sup>

In Part II of its report, *Equality Before the Law*, the Australian Law Reform Commission recognised that "[e]quality for women cannot be achieved using anti-discrimination and affirmative action legislation alone."<sup>126</sup> It recognised an important role for professional associations in promoting and protecting the interests of women in the legal profession. In particular, as regulatory bodies, the professional associations are ideally

121. *Id.* (quoting V. Marles, *Law Firms and Affirmative Action* (1992) (unpublished LL.M. thesis).

122. *Id.* (quoting V. Marles, *Law Firms and Affirmative Action* (1992) (unpublished LL.M. thesis).

123. The profession, through its regulatory bodies, controls entry into the profession (through the issue of practising certificates and the imposition of educational and competency standards), controls the type of organisation of legal practices, defines "legal work" (which is reserved to lawyers under legislation), and reserves certain work to itself.

124. WOMEN'S EQUALITY, *supra* note 42, ¶ 9.26; *see, e.g.*, Legal Practitioners Act of 1970 (Austl. Cap. Terr.); Legal Practitioners Act of 1974 (N. Terr.); Legal Practitioners Act of 1987 (N.S.W.); Queensland Law Society Act of 1952 (Queensl.); Legal Practitioners Act of 1958 (Vict.); Legal Practitioners Act of 1981 (S. Austl.); Legal Practitioners Act of 1893 (W. Austl.); Legal Practitioners Act of 1959 (Tas.).

125. *Id.* ¶ 9.26.

126. *Id.* ¶ 9.28.

situated to formulate policies and strategies, encourage their adoption by member firms, and educate and monitor compliance by members of anti-discrimination and affirmative action laws. The Commission made a number of recommendations to actively involve professional associations in addressing and eliminating discrimination in the legal profession.<sup>127</sup>

The Commission recommended that professional associations establish an Equal Opportunity Officer and create confidential procedures for dealing with complaints of sexual harassment and sex discrimination.<sup>128</sup> This recommendation, if implemented, would make available to women lawyers who are victims of sexual harassment or sex discrimination an avenue of redress that is independent, impartial, and not likely to create fear of recrimination. The Commission also endorsed the formulation of codes of conduct regarding sex discrimination, including sexual harassment and stereotyping of women lawyers.<sup>129</sup> It recommended that these codes of conduct have the status of professional rules and that the usual sanctions attach to a breach. The Commission noted that there is no provision for discrimination in the rules of professional conduct of any Australian jurisdiction except Western Australia, where the Professional Conduct Rules provide that it is unprofessional conduct for a practitioner to discriminate against another practitioner by reason of "colour, race, ethnic or national origins, sex, marital status or religious beliefs."<sup>130</sup> As the Commission recognised, "[t]he role of professional associations is to promote standards within the profession including the elimination of sexual harassment and discrimination."<sup>131</sup> The introduction of

127. *Id.* ¶ 9.2.

128. *Id.* ¶¶ 9.2, 9.35 (citing Linda J. Kirk, *Women in the Legal Profession*, 16(7) LAW SOC'Y BULL. 10 (1994) (S. Austl.). This could include the creation of the office of "safe counsel" within law societies. This safe counsel would be responsible for hearing complaints of discrimination and advising complainants of both legal and nonlegal remedies. The officer could act as an advocate for the complainant in negotiations with the person responsible for the discrimination. If the complainant prefers to remain anonymous, the officer could contact the firm and advise that concerns are held about its practices. This would ensure that the complainant remained free from retaliation.

129. *Id.* ¶ 9.34.

130. *Id.* However, despite the fact that this rule was introduced ten years ago, no complaints have been recorded. *Id.* The Commission recognised that this indicates that the mere setting of standards is insufficient without a commitment to enforce the standards. *Id.*

131. *Id.*

such a rule in all jurisdictions of Australia would indicate that the profession regards sex discrimination as unprofessional conduct that requires disciplinary action.

The Commission noted that the minimal compliance by law firms with affirmative action legislation is a matter of concern that should be acted upon by professional associations. The Commission recognised that by taking a more active role and conducting surveys of the experiences of women, the profession could better "monitor the compliance of its members with anti-discrimination laws and assess the degree to which gender bias plays a role in hiring and employment decisions."<sup>132</sup> Furthermore, in view of the reluctance by law firms to eliminate discrimination against women, the Commission recommended that professional associations work to increase compliance with affirmative action obligations.<sup>133</sup>

Finally, the Commission recognised the ability of the professional associations to encourage the profession to fulfil its responsibilities by educating its members about their responsibilities under anti-discrimination legislation. This could be done by conducting continuing legal education seminars or by producing and distributing material that sets out the requirements of the law. Professional associations could also assist in eliminating discrimination by preparing model office policies on sexual harassment, part-time work, maternity leave, promotion decisions, and work practices and by preparing, publishing, and promoting the adoption of interview guidelines.<sup>134</sup> The resources of professional associations should be made available to implement these recommendations and thereby assist in eliminating gender inequality in the legal profession.

In addition to the important recommendations made by the Australian Law Reform Commission, there have been other initiatives proposed in Victoria,<sup>135</sup> in New South Wales,<sup>136</sup> and

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132. *Id.* ¶ 9.37.

133. *Id.* ¶ 9.2.

134. *Id.* This would involve establishing objective criteria for recruitment and promotion so that law firms can ask questions relevant to the criteria, ask each applicant the same questions, and have a mixture of men and women on the selection panel.

135. In November 1993, a Women in the Legal Profession Working Party was established to examine why so few women rise to the senior ranks of the legal profession. Its terms of reference are to examine the experience of women within the



by the Law Council of Australia.<sup>137</sup> In 1993, a taskforce headed by Chief Justice Malcolm of the Supreme Court of Western Australia was established.<sup>138</sup> The Committee of the Taskforce made a number of recommendations similar to those made by the Australian Law Reform Commission. It recommended that law firms be encouraged to offer flexible working hours, permanent part-time work, job sharing, flexible work locations, career break schemes, and child care leave.<sup>139</sup> The Committee recognised that a major change of attitude toward women employees is needed from all law firms. It suggested the annual publication of a performance index rating the performance of law firms and agencies according to a number of criteria, such as the percentage of female solicitors and their seniority, the existence of parental leave policies and their content, attempts to educate staff about the nature of sexual harassment and its

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profession, including whether women enjoy the same opportunities and mobility as their male contemporaries, and whether the contribution women can make to the profession is being effectively realised. LAW INSTITUTE OF VICTORIA, WOMEN IN THE LEGAL PROFESSION SEMINAR, TRANSCRIPT OF PROCEEDINGS 8 (1993); Helen Meadows, *Evening up the Odds*, 68(8) LAW INST. J. 688 (1994). The Victorian Law Foundation recently announced a research project, *Facing the Future: Gender, Employment and Best Practice Issues for Law Firms*.

136. In 1992, the New South Wales Law Society established an Equal Opportunity Taskforce that produced an equal opportunity and promotion policy in August 1993. The Policy suggests strategies and guidelines with respect to flexible working hours, family responsibilities, child care, and leave provisions to assist law firms to implement equal employment opportunities. The policy is not mandatory, but firms are encouraged to adopt the suggestions. In March 1994, the Ministry for the Status and Advancement of Women in New South Wales commissioned an independent consultant to undertake a study on gender bias and women working in the legal system. The report *Gender Bias and the Law: Women Working in the Legal Profession in NSW* (Mar. 1995) recommended a number of "actions for consideration" by the NSW State Government and other organisations including the Law Society of NSW.

137. The Law Council of Australia has recently set up a working group to report on ways of increasing the opportunities for women to have, and to advance in, careers in the law. The group is made up of women nominated by all the Bars and Law Societies that make up the Law Council. To date, the working party has not produced any report of its findings. *Study of Role of Women in the Law*, 29(6) AUSTL. LAW. 9 (1994).

138. The terms of reference of the taskforce were to investigate the extent to which gender bias exists in the law, including in the legal profession. In its report dated 30 June 1994, the Committee members of the taskforce highlighted the barriers that confront women in the legal profession and their underrepresentation in the senior levels of the profession. REPORT OF THE CHIEF JUSTICE'S TASKFORCE, *supra* note 93, at 75. The taskforce also reported evidence of discrimination in the recruitment process, sexual harassment in the workplace, and intolerance of large law firms of family responsibilities and part-time work. *Id.* at 80-81.

139. *Id.* at 74.

inappropriateness, and the existence of flexible work arrangements to accommodate lawyers with children or other family obligations.<sup>140</sup> This would be an ideal way to ensure that firms commit themselves to gender equality as their professional image and reputation would be at stake.<sup>141</sup>

These recommendations are an excellent start in addressing the structural obstacles that continue to face women in the legal profession in Australia. The challenge that remains is for these strategies to be implemented by professional associations and for the members of the legal profession to recognise that the question of women's equal participation in the legal profession will not be solved simply by increased numbers of women. Positive steps need to be taken by the profession itself to remove the "invisible" constraints that continue to hinder women's role in the law.

#### CONCLUSION

In Australia, as in other parts of the world, women lawyers have struggled for recognition. In the early twentieth century, the struggle was to be admitted to practice on the same terms as men. This battle was fought hard and eventually won, opening the way for increased numbers of women to practise the law and form part of the profession. As we approach the twenty-first century, the struggle is to overcome the invisible barriers that obstruct women's equal participation in the legal profession. The

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140. *Id.* at 80-81.

141. The Committee recommended that the Law Society take the lead in promoting women's participation in the profession by ensuring women's full and equal participation in its councils and committees. Further, the Law Society should closely monitor and encourage women's participation in the profession by publishing guidelines on equal opportunity, adopting a code of conduct addressing gender bias, and establishing procedures for its elimination. It was suggested that maintaining stereotypes or permitting hostile working environments could be considered professional misconduct as it violates the rights of each person to equal opportunity. The Professional Conduct Rules should also contain a provision that sexual harassment is unprofessional conduct. The Committee further recommended that the Law Society develop a gender neutral format for questioning applicants for positions as Articled Clerks and encourage all firms to use it. In addition, it was recommended that the Women Lawyers Association of Western Australia establish a mentoring scheme whereby experienced female lawyers offer assistance to younger women. It also recommended that a course on law and gender be studied by all students undertaking law at universities and that continuing legal education courses on gender and discrimination be held by the Law Society of Western Australia to educate current practitioners.

challenge for Sisters Down Under, as for all women lawyers, is to remove the male standard that pervades the profession and to ensure that women's differences are recognised, that their contributions are valued, and that the profession changes to accommodate them and afford them equal status. Much of the task ahead has been translated into concrete strategies by the valuable work of groups of women (and men), in particular the Australian Law Reform Commission. What is now needed is a commitment by the profession to achieving gender equality, and steps must be taken to implement these strategies. This will require professional associations to take responsibility to ensure that their members appreciate the nature and the extent of the obstacles facing women lawyers today and to commit resources to eliminate gender bias and discrimination in the profession. It is only then that Sisters Down Under will be able to join hands with their sisters around the world and celebrate their equality in a legal profession that values their contributions and accepts their differences.