

AUSTRALIAN WOMEN’S LAWYERS

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KEYNOTE PRESENTATION

**A VIEW FROM THE TOP OF THE HILL —
A RETROSPECTIVE BY AN ACTIVIST WOMAN LAWYER**

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I INTRODUCTION

I am absolutely delighted to have been provided with the opportunity to address you today. This will be the last Australian Women Lawyers Conference I attend as Chief Justice of the Family Court of Australia (‘Family Court’) and thus, as your Patron, because the baton should be passed on, it’s a bittersweet privilege — but one I intend to savour.

In contemplating what this keynote should focus upon, I was struck by the thought that, as I approach my retirement (which is 18 months away), I feel as though I have quite a unique view of the Australian legal landscape and the place of women in it. From the top of the hill (not over it!) I can see both forward and back. I can see the past we have endured, the triumphs we have celebrated and the current challenges that will shape our futures.

So today I would like to talk a little bit about some of these things. I will discuss women in the profession and women in the judiciary in Australia, the International Association of Women Judges and the work that organisation does, the ongoing challenges of family violence, the Family Court’s engagement with Indonesian courts and the ways in which that engagement has improved Indonesian women’s lives and, before concluding, I will speak briefly about some of the highs and lows I have experienced as the head of jurisdiction of an Australian federal court. While these themes are somewhat disparate, I hope they are tied together by my overarching concern about women and their welfare, as well as my belief in our collective strength and promise.

II TAKING STOCK

When I finished law school, only around 10 per cent of my graduating class was female. My mother — who was a lawyer and also President of the Legal Women’s Association of Victoria, the precursor to Victorian Women Lawyers — lived in *very* different times. During

¹ Chief Justice of the Family Court of Australia. The views of this paper are my own; they do not represent the views of the Family Court of Australia or other judges. These views do not indicate how I would decide a case after having the benefit of the argument. I would like to thank my Senior Legal Research Adviser, Candice Parr, for her assistance in researching and composing this paper.

her years of practice, she would've seen the appointment of one female Supreme Court judge (Dame Roma Mitchell) and two female appointments as Queens's Counsel. Conversely, I have seen the appointment of the first female Solicitor General, various Supreme Court judges, a number of female chief justices and five female High Court judges.

Twenty-five years after my admission, in 1995, female lawyers comprised only 24.7 per cent of the profession. Now, about 60 per cent of Australian law graduates are women² and we constitute approximately 63 per cent of the people admitted to practice.³

Nonetheless, positive developments such as these have not wholly revolutionised the profession, and we must be realistic about the challenges that remain. For example, women make up less than 10 per cent of senior appointments in the profession;⁴ while 61 per cent of senior associates in law firms are women, we comprise less than a quarter of partners;⁵ and, according to 2014 data from the Workplace Gender Equality Agency, there is a 35.6 per cent pay gap between male and female employees in the legal industry.⁶ The Law Council of Australia's February 2014 *National Attrition and Re-Engagement Study (NARS) Report* revealed that 50 per cent of women reported workplace bullying in the legal sector (compared with 38 per cent of men), while 47 per cent of women reported that they had been subjected to gender-based discrimination (compared with 13 per cent of men).⁷ Unfortunately, the list of ongoing challenges continues.⁸

A Changing the Discourse

I'd like to focus here, though, on a particular change that I have noticed over the course of my career, which I think is very significant.

When we first entered the legal profession in large numbers, women made sacrifices in order to have successful legal careers. In my own peer group, those who were able to achieve success roughly equivalent to that of their male colleagues tended not to have families and certainly that was the case when my mother was in practice, people such as Roma Mitchell,

² Felicity Nelson, 'Women Dominate Senior Associate Positions, Excluded from Partnerships', *Lawyers Weekly* (online), 7 July 2015 <<http://www.lawyersweekly.com.au/news/16782-women-dominate-senior-associate-positions-excluded-from-partnerships>>.

³ Stuart Clark and Fiona McLeod, 'Giving Women a Fair Go is an Achievable Goal', *The Australian* (online), 21 August 2015 <<http://www.theaustralian.com.au/business/legal-affairs/giving-women-a-fair-go-is-an-achievable-goal/story-e6frg97x-1227491985092>>.

⁴ Ibid.

⁵ Marianna Papadakis, 'Women Lawyers Dominate Senior Ranks, Eye Law Firm Partnerships', *Financial Review* (online) <<http://www.afr.com/business/legal/women-senior-lawyers-amass-to-knock-on-partnership-door-20150630-gi1ol3>>; Nelson, 'Women Dominate Senior Associate Positions', above n 2.

⁶ Misa Han, 'Legal Industry Ranks Poorly on Pay Equity', *Financial Review* (online), 28 November 2014 <<http://www.afr.com/news/policy/industrial-relations/legal-industry-ranks-poorly-on-pay-equity-20141127-11volg>>.

⁷ See Law Council of Australia, *National Attrition and Re-Engagement Study (NARS) Report* (February 2014) 32.

⁸ See, eg, Ibid; Stephen Wood, 'Women in Law — The Facts', *Australasian Legal Practice Management Association* (4 November 2014) <<http://www.alpma.com.au/a-survival-guide-for-legal-practice-managers/women-in-law-the-facts?A=PrinterView>>; Victorian Equal Opportunity and Human Rights Commission, *Changing the Rules: The Experiences of Female Lawyers in Victoria* (Report, State of Victoria, 2012).

Molly Kingston, Mary Cameron, Pat Clancy and so on were all unmarried. Over time, as increasing numbers of women moved into the workforce and the professions, “‘Letting in”, the preoccupation of First Wave Feminism, [was] replaced with a concern about the vastly different terms and conditions on which women [had been] admitted’.⁹

The quest for equality became the name of the game. However, the game was rigged — ‘equality’ was actually still being measured with the male position as the default one. As Professor Margaret Thornton points out as an example, the sex discrimination legislation that was first introduced in Australia in 1975 required, in order for a claim of sex discrimination to be made out, a female complainant to be able to show that they were in the same or similar circumstances to those of a real or hypothetical man, and that she was treated less favourably because she was a woman.¹⁰ This approach led to, for example, the notorious United States Supreme Court case of *Geduldig v Aiello*,¹¹ where ‘[i]n the absence of a comparable man, it was reasoned, unfair treatment on the ground of pregnancy did not constitute sex discrimination’.¹²

In this context, ‘equality’ wasn’t really something achievable on equal terms, but dominant discourses still convinced many of us that it was, that with enough hard work, enough commitment, enough strength and resilience, we could have it all. The pendulum had swung from what was once often an assumption that women couldn’t do *anything* men could do, and should remain focused upon other duties, to an assumption that women *could* do anything men could do, *and* remain focused on other duties.

And some could, those superwomen of the ages.¹³ But many of us could not.

Then one day, in a now famous 2012 article in *The Atlantic*, an extremely accomplished woman named Anne-Marie Slaughter took a brave step and declared: ‘It’s time to stop fooling ourselves ... the women who have managed to be both mothers and top professionals are superhuman, rich, or self-employed’.¹⁴ Generally speaking, women can’t have it all, she told us — for most of us, sacrifices must be made.

Even more important than this realisation though, I think, is that which comes next, and which I have been seeing women come to more and more in recent years. That is: *we don’t have to have it all*. Particularly when ‘it all’ hasn’t been defined by us — each of us, individually. When women do trust themselves to define their priorities, goals and achievements, significant change can and does happen. An example of this, I think, is the rise of flexible working practices in the legal profession.¹⁵

⁹ Margaret Thornton, ‘Feminist Legal Theory: An Introduction’ (2003) 83 *Reform* 5, 6.

¹⁰ *Ibid.*

¹¹ *Geduldig v Aiello* [1974] USSC 129; 417 US 474 (1974).

¹² Margaret Thornton, ‘Feminist Legal Theory’, above n 9, 6.

¹³ See generally Anne-Marie Slaughter, ‘Why Women Still Can’t Have It All’ [2012] (July/August) *The Atlantic* <<http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>>.

¹⁴ *Ibid.*

¹⁵ On flexible work practices, see generally Workplace Gender Equality Agency, ‘Flexible Work — The Legal Profession’s New Normal’, *Australian Government* (2016) Commonwealth of Australia <<https://www.wgea.gov.au/employer-profiles/flexible-work-%E2%80%93-legal-profession%E2%80%99s-new->

A 2012 study by the Victorian Equal Opportunity and Human Rights Commission found that 35 per cent of survey participants had made a request for their employer to accommodate their responsibilities as a parent or carer. Of the 149 women who made requests, the majority asked for flexible work hours (72.5 per cent) while 45.6 per cent requested to work from home. Of those who reported the outcome of their request, less than 5 per cent had their request refused. 79 per cent had their request approved; another 16 per cent stated that their request was partially approved.¹⁶ So while there are still some hostile attitudes towards flexible arrangements,¹⁷ this change is an extraordinary one, and the legal profession now reportedly outperforms other industries in relation to flexible work arrangements and paid parental leave.¹⁸

It occurs to me that this flexibility also allows for a diversity of experience. This has been much in my thoughts over the last couple of days, when I was thinking about this address, and stirred in particular by two experiences. The first was the judging of the Australian Women Lawyers Award, which will be presented this evening. The nominations were all for the careers of remarkable women who have made enormous contributions to the law, to mentoring and to women's progression and societal issues generally. The second thing was that on two occasions this week I have been to swearing-in ceremonies for female judges being welcomed to the Federal Circuit Court ('FCC'), one in Sydney and one in Melbourne, and again their contributions were broad and showed extraordinary commitment. One had started in Legal Aid; both had been involved in community legal centres and the like.

Upon reflection, I realised that I could not recall hearing the same things being said about male judges at any of their welcomes that I have attended recently, and I wondered why that is the case. Clearly men work in these arenas, so that's not the issue, but it may be that those people are not the ones who are being appointed to positions on superior courts. If that is so then it suggests that women have made inroads into the appointment process and that perhaps in that sense, they *can* have it all. It might be that men have a way to go towards enjoying a similar prospect of diverse appointments.

[normal](#)>; 'Let's Get Flexible', *Lawyers Weekly* (26 October 2012) <<http://www.lawyersweekly.com.au/opinion/10948-let-s-get-flexible>>; Jacqui Walker, 'Why Your Firm Needs Flexible Working', *Legal Insight* (23 September 2015) <<http://insight.thomsonreuters.com.au/flexible-working-for-law-firms/>>; Leanne Mezrani, 'Law's Disappointing Gender Report Card', *Lawyers Weekly* (online), 27 November 2014 <<http://www.lawyersweekly.com.au/news/15901-Law-s-disappointing-gender-report-card>>.

¹⁶ Victorian Equal Opportunity and Human Rights Commission, above n 8, 4.

¹⁷ See, eg, *ibid*; Felicity Nelson, 'Salary Isn't Everything: More Lawyers Seek Flexibility', *Lawyers Weekly* (online), 29 June 2015 <<http://www.lawyersweekly.com.au/news/16736-salary-isn-t-everything-how-flexible-work-options-can-lift-recruitment>>; Sophie Schroder, 'Parental Leave "Kiss of Death" for Female Lawyers', *Australasian Lawyer* (1 October 2014) <<http://www.australasianlawyer.com.au/news/parental-leave-kiss-of-death-for-female-lawyers-192511.aspx>>.

¹⁸ Mezrani, above n 15.

III WOMEN JUDGES IN AUSTRALIA

To avoid getting too verbose about the arguments in favour of having women in the judiciary (these have been well traversed by a diverse range of scholars¹⁹), I will take it for granted that my audience here agrees with me that diversity in the judiciary (and I don't just mean gender diversity, though that's my focus here) is an important goal. As a 1993 Discussion Paper published by the Attorney-General's Department, entitled 'Judicial Appointments — Procedure and Criteria', said (and I think it remains true), one aim of the judicial appointment process ought to be ensuring that 'consistent with merit principles ... all sections of society ... are not unfairly under-represented in the judiciary'.²⁰

As the Honourable Justice Susan Kenny of the Federal Court of Australia pointed out in a 2001 speech, judicial appointment is the area in which there has been the slowest progress for women in the legal profession.²¹ This no doubt has something to do with the fact that judges are usually selected from the ranks of practising barristers,²² and female barristers still only make up about around 7 per cent of the Australian legal profession, which is less than half the number of their male counterparts (who comprise 15 per cent of the profession).²³ Only 7.92 per cent of practising silks in Australia are women.²⁴

According to statistics from the Australian Institute of Judicial Administration, as at 3 March 2016 the best performer in Australia was Canberra, where 55 per cent of the judiciary is female (but that reflects a very small judiciary comprised of only 11 judges). The worst performing state was Western Australia, with a judiciary that is only 26 per cent female. Elsewhere in Australia, the statistics are as follows:

- In New South Wales, 34 per cent of the judiciary are women.
- In the Northern Territory, the number is 30 per cent.
- Queensland, South Australia and Tasmania each have 32 per cent female judges.

¹⁹ See, eg, Sean Cooney, 'Gender and Judicial Selection: Should There Be More Women on the Courts' (1993) 19 *Melbourne University Law Review* 20; Marcia Neave, 'The Gender of Judging' (1995) 2 *Psychiatry, Psychology and Law* 3.

²⁰ 'Judicial Appointments — Procedure and Criteria' (Discussion Paper, Attorney-General's Department, September 1993) 3, quoted in Neave, above n 19, 4.

²¹ The Hon Justice Susan Kenny, 'Outsiders on the Inside: Different Guys, New Voices and the Making of the Australian Judiciary' (2001 Marjorie Smart Lecture presented at St Hilda's College, The University of Melbourne, April 2001) <<http://www.austlii.edu.au/au/journals/FedJSchol/2001/3.html>>.

²² For discussion, see The Hon Justice Susan Kiefel AC and Cheryl Saunders, 'Vienna Report — Australia: The Independence of a Meritorious Elite: The Government of Judges and Democracy' (Lecture presented at the XIX International Congress of Comparative Law, Vienna, Austria, July 2014) 9.

²³ The Honourable Justice Melissa Perry, "Women at the Bar: Aspirations and Inspirations" (Address to the Women Barristers Forum, NSW Bar Association Common Room, Sydney, 5 April 2014) <<http://www.fedcourt.gov.au/publications/judges-speeches/justice-perry/perry-j-20140405>>. Some possible explanations for this, including real or perceived gender discrimination at the bar, are set out in: Women Lawyer's Association of NSW, *Career Intentions Survey 2013–2015: Final Report* (17 June 2015).

²⁴ Justin Whaling, 'Report Highlights Inequality at Bar', *Lawyers Weekly* (online), 6 September 2012 <<http://www.lawyersweekly.com.au/news/10694-Report-highlights-inequality-at-Bar>>.

- In Victoria, 39 per cent of the judiciary are women.²⁵

Of the judges in the federal courts — namely the High Court, Federal Court of Australia, Family Court and the FCC — 36 per cent are women.²⁶ In my Court, 52 per cent of the judges are female.

There have been positive developments in this area too. In March 2015, the Victorian Government introduced a 50 per cent quota for women in all of its state courts, to address the fact that only a third of all Victorian judges were women at the time.²⁷ There also does seem to be some momentum in respect of women in the judiciary. Consider that Dame Roma Mitchell became Australia's first female judge upon her appointment to the Supreme Court of South Australia in 1965 and, when the judiciary was surveyed 30 years later in 1995, female judges and magistrates made up only 8.7 per cent.²⁸ Now, another 20 years later, we comprise about a third. Not perfect, but a pretty solid improvement when you consider the big picture.

IV THE INTERNATIONAL ASSOCIATION OF WOMEN JUDGES

I want now to tell you a bit about the International Association of Women Judges, an organisation that promotes women in the judiciary internationally and encourages governments to appoint female judges. There is also an affiliated organisation, the Australian Association of Women Judges. Judge Robyn Tupman, our President, is attending this conference, as is Justice Debra Mullins and I too am on the committee.

Created in 1991, the IAWJ is a non-profit non-governmental organisation with a membership comprised of women who work around the world at all levels of the judiciary. The IAWJ currently has around 4600 members in 75 countries and territories.²⁹ The association's aims are to:

- Pioneer judicial education programs to advance human rights, uproot gender bias from judicial systems, and promote women's access to the courts;
- Develop a global network of women judges and create opportunities for judicial exchange through international conferences, trainings, the IAWJ newsletter, website, and online community;
- Foster judicial leadership and support judicial independence; and,
- Collaborate with other organizations on issues of equal access to justice.³⁰

²⁵ See Australian Institute of Judicial Administration (AIJA), *Judicial Gender Statistics* (3 March 2016) <<https://www.aija.org.au/index.php/judicial-gender-statistics>>.

²⁶ See *ibid.*

²⁷ Felicity Nelson, 'Do We Need Quotas for Female Judges', *Lawyers Weekly* (online) <<http://www.lawyersweekly.com.au/news/16435-do-we-need-quotas-for-female-judges>>.

²⁸ Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford University Press, 1996) 293.

²⁹ International Association of Women Judges, *Who We Are* (2014) <<http://www.iawj.org/who-we-are.html>>.

³⁰ *Ibid.*

The IAWJ's work falls into two broad categories, namely, support for women in the judiciary and access to justice.³¹ The former is facilitated through international conferences held annually, where members can work together to identify issues of common concern and develop strategies for approaching particular problems. In regard to access to justice, the IAWJ works with national associations in five regions (Africa, Asia/South Pacific, Latin America and the Caribbean, Europe/the Middle East and North America)³² in order to develop training and education programs on issues concerning discrimination and violence against women.

The IAWJ is currently working on judicial leadership programs in Afghanistan, Bangladesh, Cameroon, Ghana, India, Nepal and Nigeria; is working on human trafficking in Haiti; has a program on enhancing access to justice in Malawi; and is building networks of support and dialogue for women judges in Egypt, Jordan, Libya and Tunisia.³³ Various resources are available from the IAWJ's website, including toolkits, brochures and country reports.³⁴

The support to women judges in developing countries and countries where the rule of law is under threat is much appreciated by our judicial colleagues in those countries. Among the membership are many courageous women judges and some very inspiring women, many of whom have served on international tribunals, and attendance at the conferences is always an exciting and enjoyable event. The last conference was two years ago in Arusha, Tanzania, and this year's conference is in Washington DC. The Australian Association of Women Judges sponsors female members of the judiciary from our region to attend — this year, we are sponsoring two or three judges from Papua New Guinea.

One of the significant things the IAWJ has done was to develop a toolkit aimed at stopping abuses of power through sexual exploitation.³⁵ The program grew out of the need to address this pervasive but often hidden phenomenon, which involves public officials who seek to extort sexual favours in exchange for something that it is within their power to grant or deny. Known as 'sextortion', this form of corruption uses sex, rather than money, as the currency of the bribe.³⁶ With its partner organisations in Bosnia and Herzegovina, the Philippines and Tanzania, the IAWJ developed the International Sextortion Toolkit, which is an educative instrument setting out, inter alia, the types of laws that can be used to prosecute offences of exploitation (such as anti-corruption laws, sexual harassment laws and rape laws).³⁷

³¹ International Association of Women Judges, *What We Do* (2014) <<http://www.iawj.org/what-we-do.html>>

³² International Association of Women Judges, *IAWJ Regions* (2014) <<http://www.iawj.org/5regions.html>>.

³³ International Association of Women Judges, *Who We Are*, above n 29. See also International Association of Women Judges, *Recent and Current IAWJ Programs* (2014) <<http://www.iawj.org/Programs.html>>.

³⁴ International Association of Women Judges, *Resources* (2014) <<http://www.iawj.org/resources.html>>.

³⁵ See International Association of Women Judges, *Sextortion* (2014) <<http://www.iawj.org/Sextortion.html>>.

³⁶ *Ibid.*

³⁷ International Association of Women Judges, *Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming and Ending Sextortion* (Toolkit, International Association of Women Judges, 2012).

V THE CHALLENGES OF FAMILY VIOLENCE

Within Australian society and indeed internationally, we are constantly reminded of the insidiousness — and persistence — of gender inequality by one of its worst manifestations:³⁸ violence against women in its various forms including family violence, which is of particular relevance to my work.³⁹ (Yes, despite claims to the contrary from some quarters, family violence is predominantly perpetrated against women by men⁴⁰.) The statistics are frightening and I doubt I need to repeat them to this audience.⁴¹ Even more importantly, those lives lost and those changed forever must be borne in mind in their fullness, so that numbers aren't all we see.⁴²

During the course of my legal career, I have seen significant changes in thinking about family violence. Before women's rights activists fought to have domestic violence on the policy agenda from the early 1970s, it had been seen as a private family matter and unless it resulted in severe injury, the law was not involved in its management.⁴³ In time, our social, cultural and legal values shifted and protection of women became a newly-formed priority.

It is interesting to note, though, the fluctuations in community views and perceptions about family violence. These can be illustrated most clearly with reference to three nationwide surveys — the first in 1995,⁴⁴ the second in 2009⁴⁵ and the third in 2013⁴⁶ — which sought to

³⁸ See Royal Commission into Family Violence, *Summary and Recommendations* (Victorian Government Printer, March 2016) 2 <<http://www.rcfv.com.au/Report-Recommendations>>: 'There is no doubt that violence against women and children is deeply rooted in power imbalances that are reinforced by gender norms and stereotypes'; Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, 28 February 2015, Queensland Government) 154 <<https://www.qld.gov.au/community/getting-support-health-social-issue/dfv-read-report-recommendation/index.html>> (citations omitted): 'International evidence shows the causes [of family violence] are complex — unequal distribution of power and resources between men and women, rigid or narrow gender roles and stereotypes, and a culture and attitudes that support violence'.

³⁹ Note that I will treat 'family violence' and 'domestic violence' as exchangeable terms for the purposes of this paper.

⁴⁰ See Australian Bureau of Statistics, *Personal Safety, Australia, 2012* (11 December 2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>; VicHealth, Social Research Centre and The University of Melbourne, *National Community Attitudes towards Violence against Women Survey: Infographics* (2014) <<https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes-towards-violence-against-women-survey>>.

⁴¹ See Australian Bureau of Statistics, *Women's Safety in Australia* (Commonwealth of Australia, 1996). See also Australian Bureau of Statistics, *Women's Safety Survey* (8 September 2004) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/33a109e2dcda21dfca2570920021012a/46ea7c5b824d2940ca256bd0002840df!OpenDocument>>; Australian Bureau of Statistics, *Personal Safety, Australia, 2012*, above n 40.

⁴² See generally 'These Women Are Not Statistics', *The Guardian* (30 September 2015) <<http://www.theguardian.com/global/ng-interactive/2015/mar/17/these-women-are-not-statistics-deaths-in-australia-in-2015>>.

⁴³ Anna Stewart, 'Policing Domestic Violence: An Overview of Emerging Issues' (2001) 2 *Police Practice and Research* 447, 447, citing A Binder and J Meeker, 'The Development of Social Attitudes towards Spousal Abuse' in ES Buzawa and CG Buzawa (eds), *Domestic Violence: The Changing Criminal Justice Response* (Auburn House, 1992) 3.

⁴⁴ Office of the Status of Women, *Community Attitudes to Violence against Women: Detailed Report* (Australian Government Publishing Service, 1995).

⁴⁵ VicHealth, Australian Institute of Criminology and Social Research Centre, *2009 National Community Attitudes towards Violence against Women Survey* (7 April 2010) <<https://www.vichealth.vic.gov.au/media-and-resources/publications/national-community-attitudes-towards-violence-against-women-survey-2009>>.

ascertain community opinions and attitudes towards violence against women. The research investigates four overarching areas, namely:

1. community knowledge of violence against women
2. attitudes towards violence against women
3. attitudes towards gender roles and relationships and
4. response to witnessing violence and knowledge of resources.⁴⁷

I commend these publications to you, but to give you a bit of a sense of the data they reveal:

- Some of the 2009 survey's findings were as follows:
 - Since 1995, community perceptions of what constitutes domestic violence had broadened significantly.⁴⁸
 - In both the 1995 and 2009 studies, the vast majority of respondents agreed that physical and sexual assault, and threats, was violence.⁴⁹
 - While in 2009 a greater number of people understood that violence can take a variety of forms, non-physical behaviours such as emotional, psychological, verbal and economic abuses were still less likely to be considered domestic violence than physical abuse. For example, 25 per cent of respondents did not believe that 'controlling a partner by denying them money' was a form of domestic violence and 15 per cent did not agree that 'controlling the social life of a partner by preventing them from seeing friends or family' constituted domestic violence.⁵⁰
 - Most respondents (76 per cent) understood that domestic violence is mainly perpetrated by men against women, but 22 per cent believed that domestic violence was perpetrated equally by both men and women and '[t]he shift towards a belief in domestic violence as gender-equal [was] evident particularly among men'.⁵¹
 - Whilst most people surveyed did not believe that the use of physical violence against a current or former wife, partner or girlfriend could be justified under any circumstances, sizeable numbers of people considered that physical and sexual violence could be excused if it results from a person 'getting so angry

⁴⁶ VicHealth, *Findings from the 2013 National Community Attitudes towards Violence against Women Survey (NCAS)* (17 September 2014) <<https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes-towards-violence-against-women-survey>>.

⁴⁷ VicHealth, Social Research Centre and The University of Melbourne, *Australians' Attitudes to Violence against Women: 2013 National Community Attitudes towards Violence against Women Survey — Research Summary* (2014) 1 ('2013 Research Summary').

⁴⁸ VicHealth, Australian Institute of Criminology and Social Research Centre, *National Survey on Community Attitudes to Violence against Women 2009: Changing Cultures, Changing Attitudes — Preventing Violence against Women: A Summary of Findings* (Report, Victorian Health Promotion Foundation, 2009) 7.

⁴⁹ Between 97 and 98 per cent in 2009 compared with between 91 and 97 per cent in 1995: *ibid* 7.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

that they temporarily lose control’ (18 per cent) or if the person ‘truly regrets’ what they have done (22 per cent).⁵²

- Some of the 2013 survey’s findings were as follows:
 - Most respondents recognised that violence against women includes more than just physical assault and covers a wide range of behaviours designed to intimidate and control women.⁵³
 - Only four to six per cent of respondents believed that violence against women could be justified in certain circumstances, and there was a decline in the proportion of people who believed that domestic violence could be excused if the violent person was regretful afterwards (21 per cent in 2013 compared to the aforementioned 22 per cent in 2009).⁵⁴ Nonetheless, attitudes excusing and trivialising violence were still prevalent — for example, 43 per cent of respondents believed that rape results from men not being able to control their need for sex (compared with 35 per cent in 2009); 78 per cent of people thought it was difficult to understand why women stay in violent relationships (down from 82 per cent in 2009); and 17 per cent of respondents considered that domestic violence is a private matter to be handled within the family.⁵⁵
 - Since 2009, there had been a seven per cent decline in the proportion of young people who held attitudes that supported violence against women at the extreme end of the spectrum, and the decline was ten per cent in young men.⁵⁶
 - More than half of respondents (53 per cent) believed that women often fabricate allegations of domestic violence in order to improve their prospects in family law cases.⁵⁷
 - More than a quarter (27 per cent, up from 23 per cent in 2009) of respondents thought that men make better political leaders than women.⁵⁸ Odd really. Recent experience in Australia would suggest that that isn’t the case.
 - Up to 28 per cent of respondents endorsed attitudes supportive of male dominance in decision-making in relationships, a dynamic which has been identified as a risk factor for partner violence.⁵⁹

⁵² Ibid 8.

⁵³ VicHealth, Social Research Centre and The University of Melbourne, *Australians’ Attitudes to Violence against Women: Findings from the 2013 National Community Attitudes towards Violence against Women Survey (NCAS)* (Report, Victorian Health Promotion Foundation, 2014) 10–11 (‘2013 NCAS Report’).

⁵⁴ Ibid 11, 13.

⁵⁵ Ibid 12–13.

⁵⁶ *2013 Research Summary*, above n 47, 5.

⁵⁷ *2013 NCAS Report*, above n 53, 13.

⁵⁸ Ibid 14.

⁵⁹ *2013 Research Summary*, above n 47, 6. See also *2013 NCAS Report*, above n 53, 34.

Crucially, the 2013 survey also revealed that 13 per cent of Australians think the main cause of family violence is financial stress; 64 per cent think it's because men can't control their anger.⁶⁰ Thus, while significant strides have been made, there is still a great deal of work to do.

It should of course be acknowledged that the 2013 survey was undertaken before the recent crescendo in public awareness of family violence that has been reached as a result of Rosie Batty's time as the 2015 Australian of the Year; the \$100 million women's safety package pledged by the Australian Government in the latter half of last year and the strong public condemnation of family violence that was voiced alongside that pledge; the 2015 *Not Now, Not Ever* report by the Taskforce on Domestic and Family Violence in Queensland,⁶¹ and, most recently, the report and recommendations by the Victorian Royal Commission into Family Violence.⁶² It will be very interesting indeed to see what the next survey — slated for 2017 — reveals when the time comes.

Community views are bound to change in light of the tremendous groundswell that has been created around this issue, particularly as governments are actively seeking to combat the problem. The Queensland Government, in its response to the *Not Now, Not Ever* report,⁶³ set out a number of initiatives that have already been executed in that state pursuant to the Taskforce's recommendations, the implementation of which is being overseen by an Interdepartmental Committee. For example, the Queensland Government allocated \$31.3 million in the 2015–2016 state budget for further work on the recommendations, including \$237,000 to trial a specialist family violence court in Southport in order to inform the development of a specialist approach for dealing with family violence matters across the state.⁶⁴

As for the Victorian Royal Commission, the report has not yet been out for two weeks, and yet Premier Daniel Andrews has already committed to implementing all 227 of its recommendations,⁶⁵ which include objectives that will be relatively easy to achieve, such as changing family violence legislation,⁶⁶ as well as more ambitious reforms like significantly expanding the availability of family violence services, such as by providing Flexible Support Packages to assist victims beyond the crisis period, including by providing rental and mortgage subsidies where required as well as assistance for costs associated with counselling,

⁶⁰ VicHealth, Social Research Centre and The University of Melbourne, *Infographics*, above n 40.

⁶¹ Special Taskforce on Domestic and Family Violence in Queensland, above n 38.

⁶² Royal Commission into Family Violence, above n 38.

⁶³ Queensland Government Response to the Report of the Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Response, 17 August 2015, Queensland Government) ii.

⁶⁴ *Ibid.*

⁶⁵ See, eg, Stephanie Anderson, 'Domestic Violence: Daniel Andrews Vows to Overhaul "Broken" Support System after Commission Report', *The Age* (online), 30 March 2016 <<http://www.abc.net.au/news/2016-03-30/victorian-family-violence-system-overwhelmed-report-says/7283784>>.

⁶⁶ Royal Commission into Family Violence, above n 38.

education, employment and so on.⁶⁷ It is going to be very interesting to see the effects these types of initiatives have on community views and expectations over time.

A Family Law

Within family law, we have also seen significant changes in this area. Family violence wasn't even expressly mentioned in the original Family Law Act.⁶⁸ Indeed, it was only in the *Family Law Reform Act 1995* (Cth) that references to family violence and family violence orders were incorporated.⁶⁹ Family violence provisions were subsequently strengthened by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), but that legislation also had negative impacts in relation to family violence, which have been well documented in, for instance, the Australian Institute of Family Studies' *Evaluation of the 2006 Family Law Reforms*.⁷⁰ As a result, the government introduced the *Family Law Legislation (Family Violence and Other Measures) Act 2011* (Cth),⁷¹ which came into operation on 7 June 2012.

It is telling to consider how family violence has been defined in the Act over time. In 1995, it was defined as follows:

'family violence' means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to fear for, or to be apprehensive about, his or her personal well being or safety ...⁷²

In 2006, the definition was revised to state that:

family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

This objective requirement that a victim's fear or apprehension be reasonably held was then repealed by the *Family Law Legislation Amendment (Family Violence and Other Measures)*

⁶⁷ Ibid.

⁶⁸ See Australian Law Reform Commission, *Family Violence — A National Legal Response* (ALRC Report 114, 11 November 2010) [4.31] <<https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>>.

⁶⁹ See Helen Rhoades, Nareeda Lewers, John Dewar and Elise Holland, 'Another Look at Simplifying Part VII' (2014) 28 *Australian Journal of Family Law* 114.

⁷⁰ Rae Kaspiew et al, *Evaluation of the 2006 Family Law Reforms* (Australian Institute of Family Studies, Australian Government, December 2009) <<https://aifs.gov.au/publications/evaluation-2006-family-law-reforms>>. See also Richard Chisholm, 'Family Courts Violence Review' (Report, 27 November 2009) <<http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Documents/Family%20Courts%20Violence%20Review.pdf>>; Family Law Council, 'Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues' (Report, December 2009) <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Improving%20responses%20to%20family%20violence.pdf>>.

⁷¹ Note that a review of the 2012 family violence reforms was completed in 2015: Rae Kaspiew et al, *Evaluation of the 2012 Family Violence Amendments* (Australian Institute of Family Studies, Australian Government, 2015) <<https://aifs.gov.au/projects/evaluation-2012-family-violence-amendments>>.

⁷² See *Family Law Reform Act 1995* (Cth).

Act 2011 (Cth) and a new definition, contained in s 4AB(1) of the Act, was enacted in its place, defining family violence as:

violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.

The Act then goes on to set out a number of examples of behaviour that may constitute family violence according to this definition, including assault (physical or sexual),⁷³ stalking,⁷⁴ repeated derogatory taunts,⁷⁵ deliberately injuring an animal,⁷⁶ unreasonable denial of financial autonomy⁷⁷ and preventing a family member from making or keeping connections with family, friends or culture and so on.⁷⁸ This new definition was intended to recognise 'the wider range of behaviour experienced by victims of family violence'.⁷⁹

The family courts (being the Family Court and the FCC) have also made concerted efforts to assist those who have been victims of family violence in terms of their participation in family law matters. For example, the Family Violence Committee (a joint Family Court–FCC committee) publishes the *Family Violence Best Practice Principles*,⁸⁰ which are designed to provide practical guidance to courts, legal practitioners, service providers, litigants and other interested persons in cases where issues of family violence arise. Forms require litigants to identify if family violence is present; family consultants conduct risk assessments. Video conferencing allows alleged victims to provide evidence from a separate and safe location⁸¹ (often from another court building or registry) and security personnel are available to be in the courtroom at all times. The Family Court and FCC's *Family Violence Plan 2014–16* recognises the need to focus on operational processes, including safety at Court, with a specific goal of ensuring the Court's physical layout, processes and practices support the safety of clients while they are on the premises.⁸² Safety plans can also be developed and are available to litigants in all matters. Tailored to a litigant's personal needs, safety plans can encompass the use of separate waiting rooms and safe rooms, a security escort to and from courtrooms and conference rooms, staggered arrivals and departures, teleconferencing and shuttle conference, as well as the use of support persons.

It should also be noted that the Family Law Act gives judges strong case management powers that can assist in preventing re-traumatisation of victims during proceedings under Part VII of

⁷³ *Family Law Act 1975* (Cth) s 4AB(2)(a) and (b).

⁷⁴ *Ibid* s 4AB(2)(c).

⁷⁵ *Ibid* s 4AB(2)(d).

⁷⁶ *Ibid* s 4AB(2)(f).

⁷⁷ *Ibid* s 4AB(2)(g).

⁷⁸ *Ibid* s 4AB(2)(i).

⁷⁹ Explanatory Memorandum to the Family Law Legislation Amendment Bill 2015 [17].

⁸⁰ Family Violence Committee, *Family Violence Best Practice Principles* (Family Court of Australia and Federal Circuit Court of Australia, 3.2 ed, December 2015). See also Family Court of Australia, *Family Violence Best Practice Principles* (19 January 2015)

<<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/family-violence-best-practice-principles/>>.

⁸¹ *Family Law Act 1975* (Cth) s 69ZX(1)(c), s 102 D.

⁸² See Family Court of Australia, *Family Violence Plan 2014–16: Family Court of Australia and Federal Circuit Court of Australia* (31 December 2014)

<<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/fv-plan>>.

the Act. For example, the court is to ensure that proceedings are to be conducted in a way that will safeguard parties against family violence⁸³ and the court can limit, or not allow, cross-examination of a particular witness where appropriate.⁸⁴ These powers are in addition to the general rules about giving evidence, improper questioning and such which are contained in the *Evidence Act 1995* (Cth).⁸⁵

VI INTERNATIONAL ENGAGEMENT

Another Family Court initiative that I am proud to have encouraged during my time as Chief Justice is our international engagement, particularly that with Indonesia.

We have been involved in court-to-court cooperation with the Indonesian courts since late 2004, which has been funded by successive Australian Government law and justice programs. This started as a court-to-court initiative in which the Federal Court had already been involved. The Family Court's involvement was directly with the Religious Courts and their administration and so things developed in a very different way. As a result of the Religious Courts' desire to emulate the Family Court by surveying court users, they discovered that there was considerable discrimination against impoverished women who were heads of households and their children. The main issue was that proof of births, marriages and divorces — essential in order to access social services, education and such — were poorly documented and generally required people to approach a court to obtain certification of a marriage and, thereafter, a birth certificate for any children of the marriage, and also of divorces.

Poor women were unable to afford court fees, or the travel to attend district courts. As a direct result of the survey, the Supreme Court provided significant funding to the Religious Courts to waive court fees and to do circuits to remote rural areas. This has had a significant effect on access to justice — data captured between 2007 and 2010 showed that the number of poor people accessing the Religious Courts increased 14-fold in that timeframe.⁸⁶

One of the other significant reforms that occurred resulted from a visit that was undertaken to observe Legal Aid duty lawyers in Australia; following this, the Religious Courts were funded to appoint duty lawyers, who are often paralegals, to be available in circuit towns to assist people in their preparation of their documents and their case. All these facilities are available both to Muslims in the Religious Courts and non-Muslims in the General Courts.

⁸³ *Family Law Act 1975* (Cth) s 69ZN(5)(b).

⁸⁴ *Ibid* s 69ZX(2)(i).

⁸⁵ See *Evidence Act 1995* (Cth) Part 2.1 Div 3; s 41; s 84.

⁸⁶ UN Women, *2011–2012 Progress of the World's Women: In Pursuit of Justice* (Report, United Nations Entity for Gender Equality and the Empowerment of Women, 2011) 75.

Another initiative was the inspiration we gave the Religious Courts in terms of publishing judgments on the internet, which was arranged through AustLII, and many Religious Court cases can now be found on the AsianLII website.⁸⁷

Having access to the courts in family law and legal identity matters is critical to supporting broader human rights within Indonesian society, as well as good governance and inclusive development. It is also one of the unexpected but very rewarding aspects of my role.⁸⁸

VII HIGHS AND LOWS

There are many of both, but I'll just refer to a couple.

One of the highs for me has been the increasing development of international family law, and the significant part that Australia plays in the international family law arena. Some of these developments include:

- establishment of the International Hague Network of Judges,⁸⁹ initially as a means of facilitating the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* ('the Abduction Convention'),⁹⁰ but which is increasingly of use in relation to the other 'Hague Children's Conventions'⁹¹ as well (Australia has designated two Network Judges; I am one and the other is Justice Victoria Bennett);
- judicial communication between judges in that Network,⁹² which currently includes more than 101 judges representing 82 countries on all continents;
- the growth of international family law in our region with considerable effort from Australia in assisting those countries who have more recently ratified the Abduction Convention (for example, Japan and Singapore);
- the creation of the Association of International Family Judges, of which I am co-chair;
- the respect with which Australia is regarded at the Permanent Bureau of the Hague Conference on Private International Law, resulting in Australian judges being represented on most of their committees. I am currently chairing the Working Group

⁸⁷ See *Asian Legal Information Institute* (8 April 2016) <<http://www.asianlii.org/>>.

⁸⁸ Family Court of Australia, *Annual Report 2014–15* (Commonwealth of Australia, 2015) 44.

⁸⁹ See Philippe Lortie, 'Background to the International Hague Network of Judges' (Autumn 2009) (14) *The Judges' Newsletter on International Child Protection* <http://www.hcch.net/index_en.php?act=text.display&tid=60>.

⁹⁰ Opened for signature 25 October 1980, 1343 UNTS 97 (entered into force 1 December 1983).

⁹¹ *Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption*, opened for signature 29 May 1993, 1870 UNTS 167 (entered into force 1 May 1995); *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children*, opened for signature 19 October 1996, 2204 UNTS 95 (entered into force 1 January 2002); *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, opened for signature 23 November 2007 (entered into force 1 January 2013).

⁹² See Permanent Bureau, *Emerging Guidance regarding the Development of the International Hague Network of Judges and General Principles for Judicial Communications, including Commonly accepted Safeguards for Direct Judicial Communications in Specific Cases, within the Context of the International Hague Network of Judges* (Hague Conference on Private International Law, 2013).

that is designing a guide to good practice on the grave risk defence in the Abduction Convention;

- I am also a member of an International Advisory Committee recently established by Singapore that provides advice on best practice in family law; and
- I speak at many international conferences.

It has been particularly pleasing for me to see the development of international family law in the past 10 years and Australia's leadership role in our region.

There are also a number of low points in my job, many of them connected with resourcing, but I will pick out one which is probably more difficult than most. That was the Darcey Freeman murder in January 2009. On that day, Darcey's father stopped his car on Melbourne's West Gate Bridge in busy morning traffic and threw her over the side of the bridge, to her death. She was not yet five years old.

The community response was understandably one of shock but also one of angry recrimination against the Family Court, and this played out within hours in all the media. In fact, this case was a very difficult family law case being dealt with in the FCC, and no one (including the Coroner in the recent release of his report) believed the father's actions could have been predicted.

The parties had had a joint parenting arrangement for three years and the issues before the judge, which had been resolved by consent three days earlier, were focused on how many nights per fortnight the child should spend with the father. There was no suggestion at any point in the case that the father was likely to pose a risk of harm to his children.

The immediate virulent public reaction required me to engage with the press almost immediately, and to reveal some things about the case, such as the broad dispute between the parties. That intervention did have the effect of calming down most of the media. But certain groups continued to agitate, and not long afterwards a group of women activists held events in major capital cities to which the media were invited and at which people were encouraged to wear red face scarves to indicate blood on the hands of the court.

Fortunately the publicity around the trial, conviction of the father and, more recently, the release of the coroner's report makes it clear that these attacks on the court were entirely misplaced. But regrettably no one is prepared to apologise for their unreasonable criticisms at the time.

In the past few years research has given us substantially more information about filicide than there was when I took on this role, and it is now easier than it was 10 years ago to explain that unfortunately parents kill children for all kinds of reasons, which do not include orders made by the courts (although they may be contemporaneous events). But every time a child is killed by a parent where there are proceedings on foot, we do an assessment of our processes and no judges are left unscathed, however unpreventable it was.

VIII CONCLUSION — WHERE DO WE WANT TO BE IN FIVE YEARS?

Although there are further mountains to climb for women lawyers, the progress is encouraging. For me one of the most encouraging signs is that there are different work policies and practices which do not impede the path to success. It's particularly encouraging for me to see around the table at the Council of Chief Justices of Australia and New Zealand that, of 12 Chief Justices, 5 are women. I am very proud to be part of that group and to be able to say that it is now unexceptional for a woman to be a head of jurisdiction (and I'm lucky enough to have had two such roles). In addition, we have three out of seven High Court judges who are women, and in Australia three heads of courts of appeal.

To answer the question of 'where do we want to be in 5 years' time?', I'd say we need to continue to work hard to eliminate those areas in which there is still discrimination, to continue to provide the support and encouragement that this organisation provides so well, to enable women lawyers to achieve whatever they want to achieve, without the impediments that discriminatory practices can entrench. Women lawyers are a truly inspiring group. We should be supporting each other to enable those inspirational women who can make a difference to be visible and heard.

I have been very proud to be your patron.