



AUSTRALIAN  
WOMEN  
LAWYERS

# Themis

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Australian Women Lawyers Board Members 2004

L to R, Back Row, Marilyn Bartole, Treasurer, Sarah Coffey Vic (VWL), Jane Knowler Vice President, SA, Tracy Fantin Qld, Penelope Giles WA, Christine Trueman Tas, Caroline Kirton Vic (WBA). Front Row, Noor Blumer President ACT, Jennifer Batrouney SC Vic immediate past President, Gabrielle Martine Secretary NT

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AUSTRALIAN WOMEN LAWYERS WISHES TO ACKNOWLEDGE THE CONTINUING  
GENEROUS SUPPORT OF **MALLESONS STEPHEN JAQUES**

## President's Report

By: Jennifer Batrouney SC,  
Past President AWL 2003/2004

One of the major achievements for Australian Women Lawyers ("AWL") this year has been the growing acceptance of equality of opportunity briefing practices. Among those entities which have agreed to adopt such practices during 2004 are the Law Council of Australia, the Standing Committee of Attorneys-General, Mallesons Stephen Jaques, the ACCC, ASIC, ACLA, the National Australia Bank and Telstra.

AWL has also been instrumental in securing the agreement of Superior Courts throughout Australia to conduct gender-based surveys of appearances to build upon the surveys conducted in Victoria in 2000/2001.

The study has two objectives: to provide an objective measure of whether equality between female and male barristers exists in the important area of courtroom advocacy and to provide systematic data against which to test anecdotal evidence of the infrequency of briefing of female barristers.

We have met with leaders of the legal profession to discuss issues that concern women and women lawyers in Australia, made various submissions to government bodies on these issues and been represented on various National committees that work to advance equality of opportunity for women lawyers in Australia.

AWL sponsored the University of Melbourne Centre for Comparative Constitutional Studies conference to Honour Mary Gaudron's contribution to the law held on 5 March. The President attended and presented a paper on "Mary Gaudron's contribution to women and the law".

In summary, AWL remains the leading National voice for women lawyers in Australia. On a personal note, I have always enjoyed the strong support of the board throughout my term as President and I leave the organisation in the extremely capable hands of Noor Blumer, who has taken over the Presidency.

Jennifer Batrouney SC  
3 November 2004



From left: Jennifer Batrouney SC, Professor Eileen Kaufman, Sarah Coffey and Samantha Marks

### Winner of the Inaugural WA Chief Justice's Prize for Outstanding Reader in the WA Bar Association Bar Readers' Course in 2004



**Congratulations** to Ms Rebecca Lee on winning the inaugural Chief Justice's Prize for the Outstanding Reader in the Western Australian Bar Association's Bar Readers' Course in 2004. Her name will be the first inscribed onto the perpetual silver platter.

This was the first year the Course was offered by the WA Bar Association, and its successful completion is a necessary requirement for those people now choosing to make a career as independent barristers in Western Australia. The Course was comprised of four modules being:- (1) Advocacy; (2) Ethics; (3) Evidence and (4) Jurisdiction and Procedure. Ms Lee won the prizes in the Advocacy and the Jurisdiction and Procedure modules, as well as the overall prize.

Thirteen people (13) enrolled as Readers this year, 3 of them women. In addition seventeen (17) members of the amalgam enrolled in the Advocacy module alone, including 4 women. The Advocacy module was a focal point of the Bar Readers' Course given the central role of advocacy in the professional responsibilities of Members of the Association. The Advocacy Module Leader was Ms Gillian A Braddock SC.

Ms Lee commenced as a barrister at Francis Burt Chambers in February 2004, practicing in civil and commercial litigation. She has a Bachelor of Science, majoring in pure mathematics, as well as a Bachelor and Master of Laws from The University of Western Australia. Her running joke since the prize giving ceremony for the Course is that her name looks good in silver!

## Australian Taskforce on Care Costs

Juliet Bourke, New South Wales

The (Australian) Taskforce on Care Costs, recently launched preliminary results from its survey on workers with caring responsibilities and the cost of care. WLA NSW and AWL are both members of the Taskforce, a strategic alliance between government, non-government and business organisations. WLA NSW has also been a key financial sponsor of the survey.

The random sample national survey targeted Australians who are currently in employment and who have caring responsibilities. The aim of the survey was to build a profile of the relationship between care costs and paid work.

Preliminary results from the "Creating Choice: Employment and the cost of caring survey" show overwhelming support for tax reform to reduce the cost of care paid by workers juggling their caring arrangements and income. 78% of respondents (who believe that the cost of care is too high) support a change in the tax system, such as the introduction of a rebate or tax deduction, to relieve the cost of care, including childcare and the care of elderly or disabled dependents.

The results show that a significant proportion of workers (over 1 in 4) have already reduced their working hours due to the high cost of care, and 1 in 4 have considered leaving the workforce altogether. "If we take steps to get the mix right, there is an opportunity here for increasing workforce participation, the generation of income tax, and assisting business growth. These issues need to be front and centre of the current political focus on work and family," says Juliet Bourke, Chair of the Taskforce on Care Costs.

"We support policy initiatives that are fair, financially viable and improve choice for workers who are also carers. The current political focus on childcare is a good first step, but needs to be broader to ensure there is a focus on all caring relationships, including the elderly and people with disabilities," says Juliet.



## NT's first female QCs

Gabrielle Martin, Northern Territory

NTWLA congratulates the Queen's Counsel appointed in October 2004, Peter Barr QC, Suzan Cox QC and Raelene Webb QC (see photograph). Raelene and Suzan are the first two women QCs ever appointed in the Northern Territory.

Suzan Cox is the current Director, NT Legal Aid Commission. Suzan graduated from UNSW with BA., LLB, (1978). She also has a Masters degree in Criminal Law from NYU (1985). In the period 1980-90, she was a solicitor in the Office of the Public Solicitor, Port Moresby, a Senior Criminal Solicitor at CAALAS, and a Senior Criminal Solicitor at NAALAS. She practised at the Melbourne Bar in that time. From 1990 until 2002, she practised law at the NT Legal Aid Commission as Senior Solicitor, Family Law Practice, Senior Counsel, Criminal Law Practice. She has also been its Deputy Director and was appointed Director in 2002.

Raelene was first admitted to practice as a barrister and solicitor in the Northern Territory in 1992. She has a BSc (Hons) from the University of Adelaide and a LLB from the University of Queensland. She was an Associate to His Honour Justice Kearney, a Judge of the Supreme Court of the Northern Territory before commencing work with the Northern Territory Department of Law (now the Attorney Generals' Department). In 1994, Raelene was appointed Crown Counsel. She has practised exclusively as a barrister since that time advising on a wide range of matters and appearing in various tribunals, the Northern Territory Supreme Court and Federal Courts (including the High Court) in a variety of cases.

Since Raelene's move to the private bar in March 1999, she has continued to expand her practice and has appeared as lead counsel in a number of matters, both at first instance and on appeal. Raelene is a member of the NT Bar Council and the NT Council of Law Reporting. Raelene is also the Discrimination Officer for the NT Bar Association and has been appointed the Northern Territory representative on the Australian Bar Association Gazette Editorial Committee.

Raelene's main areas of practice include: appellate advocacy, constitutional law, Aboriginal land rights and native title, torts (particularly liability of public authorities), administrative law, international law, public law and mining law.

## NT's First Law Council President

Gabrielle Martin, Northern Territory

Darwin barrister Stephen Southwood QC is the first Northern Territorian to be appointed President of the Law Council of Australia.

"One of the most important challenges facing the legal profession is maintaining its independence and the rule of law in the face of global terrorism and the consequential expansion of the powers of executive government.

It is important that the Law Council continues to make strong submissions to the government about proposed legislation such as the Anti-Terrorism Bills, the National Security Information (Criminal Proceedings) Bills and the legislation dealing with money laundering."

Mr Southwood's other commitments include developing relationships with the legal profession in Asia and continuing to undertake the Law Council's work in relation to the National Model Laws project, the rationalization and reduction of insurance costs for lawyers, the protection of common law rights and access to justice.

"The Law Council has developed a strategy to make international relations, particularly with our colleagues in Asia, one of its main stream goals. The Lawasia Conference on the Gold Coast in March 2005 will be a significant step forward in this regard".

Mr Southwood told the Northern Territory Women Lawyers Association that it was very pleasing that the Law Council's Equal Opportunity Briefing Policy for Female Barristers and Advocates, released earlier this year, had been well received by the legal profession.

"This equitable briefing policy will play an important role in the progression of women in the law, the judiciary and the wider community," Mr Southwood said.

Conference Honouring our AWL Patron,  
Justice The Honourable Mary Gaudron Q.C.  
Marguerite Bowen, Northern Territory with Mary Gaudron



This conference, held on 5 March 2004 in Melbourne was opened by Joy Murphy, Wurundjeri Elder, welcoming the participants to the Country.

The first session was chaired by Associate Professor Kim Rubenstein. Professor Rubenstein Fay Marles, the Chancellor of University of Melbourne presented Justice Gaudron's short biography and outlined the day's format. Justice Susan Kenny presented speech addressing concepts of Judicial Responsibility, and Professor Cheryl Saunders spoke about the interpreting of the Constitution.

The second session was chaired by Professor Marcia Langton (TBC) from the Northern Territory.

Associate Professor Kim Rubenstein presented a speech about Citizenship and Membership of the Australian Community. Professor Jenny Morgan presented a speech about Equality and Discrimination: Understanding Context. She spoke about migration cases, where she referred to the need for recognition of equality as a justice, and to observe the right to freedom of movement. She also mentioned family law, cases for freedom of movement (relocation cases) and the Street's case. The need for equality in decision-making process was also addressed.

Maureen Tehan spoke on the topic of Indigenous issues, addressing pre-Mabo and after-Mabo positions.

The third session was chaired by Priya Sarat Chandran, Feminist Lawyers Convenor.

Marilyn Warren, the Chief Justice of the Supreme Court of Victoria spoke about the Criminal Law.

Nicola Roxon MP, Shadow Attorney-General, spoke about Mary Gaudron's contributions to concepts of government and administrative law. The question posed by Nicola was: Does Australia have the tools to maintain democracy? She addressed the issue of legal standing to initiate cases against the government, the issues of legislative tools, i.e. Freedom of Information Act and the separation of powers.

Dr Adrienne Stone (ANU) addressed the conference in the issue of Constitutional Rights, referring to the Kruger's case and the freedom of political communication. Dr Stone further addressed the issue of a statutory bill of rights, and whether the courts should have the power to make declaratory orders.

The final session was chaired by Pamela Tate SC, the Solicitor-General for Victoria. During this session Jennifer Batrouney SC (Australian Women Lawyers) addressed the conference on the topic of Mary Gaudron's contribution to Women and the Law.

Justice Gaudron responded with compassion, understanding and great sense of humor.

## Profile



### Mary Ridsdale, Lawyer Since 1947 Justice Sally Thomas, Northern Territory

This year, Mary Ridsdale turns 80 years of age. She has every reason to celebrate a remarkable career in the law.

Mary currently lives in Alice Springs. As well as her varied and diverse life in the law, Mary is the mother of six children. She now has time to enjoy the company of grandchildren and great-grandchildren and a close family life, plays golf and prepares meals for St Vincent de Paul. She regularly attends a church primarily attended by Aboriginal people from Alice Springs and surrounding communities. She says she enjoys singing with and maintaining contact with many Aboriginal friends and former contacts.

Mary was admitted to practice as a legal practitioner in Melbourne on the 1<sup>st</sup> April, 1947. After many years as an employed solicitor and raising six children, Mary moved to Papua New Guinea in 1975.

There she spent six years with the Public Solicitors Office appearing for defendants in the Supreme Court of Papua New Guinea. For four years she managed the Public Solicitors Office in Rabaul and travelled all over New Guinea on the Supreme Court Circuit.

In 1975, Mary was appointed as the first solicitor to the newly established Katherine Regional Aboriginal Legal Aid Service. In this capacity she appeared regularly in the Magistrates Court in Katherine and the Supreme Court in Darwin. Through her dedication and industry the service provided very comprehensive and competent legal representation for Aboriginal people living in Katherine and surrounding communities.

Mary moved to Alice Springs in 1989 to take up employment as a solicitor with Stone and Buckley, now known as Morgan Buckley. She continued in full time practise as a solicitor with this firm for 10 years.

In 1997 Mary was appointed as a member of the Liquor Commission, now the Racing, Gaming and Licensing Commission. She remained as a member of the Commission until 2002.

Mary still enjoys mixing at social gatherings with lawyers. As she says "she always does enjoy the company of other lawyers".

## Trafficking of Women & Children

Georgina Costello

In June this year, I attended a conference on Tackling the Trafficking of Women and Children in London. I heard a presentation by Detective Sergeant Andy Johnson of the Kent Police who spoke about an African girl trafficked into the UK. She was travelling in a car through the Dover Port on a look-alike passport as a member of a group who were posing as her family. A suspicious immigration officer identified that something was wrong. It emerged that the girl was 14, pregnant and had been exploited in prostitution in three countries. She had been trafficked at such a young age that she did not know the name her mother had given her or her country of origin. It took months for this girl to tell her story, which she was able to do after receiving extensive support from the Kent County Council Asylum Team. She remains in their care, along with her child who has now been born. The driver of the car was arrested and convicted.



Detective Sergeant Johnson also spoke of a case where a Vietnamese girl arrived in the UK on a false Japanese passport. She said she was going to meet an uncle. Again, an astute immigration official became suspicious and made some inquiries. Police checks revealed that her "uncle" had links to major crime groups and many other "nieces" and "nephews" who had come to the UK. The Vietnamese girl was 14 and she did not know what country she had arrived in. She later disclosed that her family had sold her when she was aged 6 and she had been in prostitution in Saigon. She remains in the care of the Kent County Council Asylum Team.

In Australia in September 2001, our immigration officials raided a brothel in the Sydney suburb of Surrey Hills. They found a woman there who said she had been sold into prostitution aged 12 in Thailand, brought to Australia aged 15 and had been in prostitution ever since. She said her name was Puongtong Simaplee and that she was 27. She did not produce valid identification documents. Under Australia's mandatory detention of "unlawful non-citizens" she was taken to the Villawood Immigration Detention Centre. When she arrived at Villawood, she had self harm scares, weighed only 38 kilos, had hepatitis C, an eye infection and possibly pneumonia. She disclosed that she was addicted to heroin and she showed symptoms of narcotics withdrawal shortly after her arrival in detention. She was given a bucket and as the withdrawal symptoms intensified, she vomited, defecated and urinated in that bucket, too weak to walk to the bathroom. Three days after her arrival at Villawood, without having seen a lawyer, social worker or friend while in detention, she died face down in a pool of vomit.

This year, a source within the sex industry told me that he had gone to an inner city brothel a few years ago in an Australian capital city with a bolt cutter to free the foreign women inside whose ankles were chained to a central pole in a room of beds.

In 2003, over 14 million people passed through the port of Dover into the UK, over 2 ½ million of these people came through by car. In the same year, over 2.2 million people came into England by car through the channel tunnel from France. Travel into Australia, while not as

prolific as to England, is significant. Finding trafficking victims among the flow of people across international borders, is like finding a needle in a haystack. Finding trafficking victims who are locked up in brothels can also be difficult because prostitution may be underground and hidden within particular ethnic communities. So when we do manage to find trafficking victims, we must look after them properly, as British services have done in the two cases described by Detective Sergeant Johnson.

In Australia, there has been little effort to find and free women enslaved in brothels until a series of Australian Federal Police raids which have taken place over the past eighteen months. Ill-treated and ignored for far too long, trafficking victims in Australia require our urgent attention and assistance. To combat trafficking, Australia must:

- provide training to police, immigration officials and non-government organisations to detect trafficking,
- provide support to victims of trafficking by providing, at a minimum, housing, counselling, legal advice, education, and visa rights,
- implement community awareness programs to address demand for and use of trafficking victims, and
- pass laws adequately criminalising trafficking crimes.

Australia is well on the way to improving our response to trafficking, however, our current system has some inadequacies. In particular, a new victim support package is only available (beyond an initial period of 30 days) to those victims of trafficking who have been useful to an investigation or prosecution of traffickers. Also, visas for trafficking victims are only available to those who have been useful to an investigation or prosecution of traffickers. All trafficking victims need our support and protection, not only those who are willing to be star witnesses.

In the "Program Guidelines" for the Federal Government's "Trafficking In Persons Victim Support Programme" dated December 2003 released by the Office for the Status of Women, it states on page 6 that the trafficking victim support provider "will help arrange legal assistance for clients of up to 3 consultations. Legal assistance will need to be by a paid lawyer. The Case Manager is not permitted to engage pro bono legal services". On page 10 of the guidelines, it states that "Clients will want to know their immigration status and the likelihood of being given permanent residency in Australia. Information on this matter will be provided by DIMIA officials".

I have provided pro bono advice to victims of trafficking in Australia and last year, I appeared at the inquest into the death of Ms Puongtong Simaplee. I was 27 when I appeared in the inquest, the same age Ms Simaplee said told immigration officials she was three days before she died. Learning about this woman's treatment by Australian authorities has motivated me to research into and write about Australian trafficking law and policy and I was recently awarded a Churchill Scholarship to continue this research in the USA and Italy next year.

In my opinion, it may often take more than 3 sessions to provide legal advice to trafficking victims, DIMIA officials are not the appropriate persons to provide information to trafficking victims about migration rights, and the advice of pro bono lawyers are crucial in obtaining justice for trafficking victims in Australia. I encourage Australian women lawyers to provide pro bono legal assistance to trafficking victims if they are able to and call for the Office for the Status of Women to amend the provisions of their Victim Support Program so that trafficking victims can be appropriately protected, supported and advised. Those willing to assist trafficking victims by providing donations of funds or services, should contact the UTS Community Law Centre in Sydney.

Georgina Costello is a Melbourne barrister

## Thought Of Practising In The Solomon Islands?

Katrina Fairburn – first 12 months of RAMSI

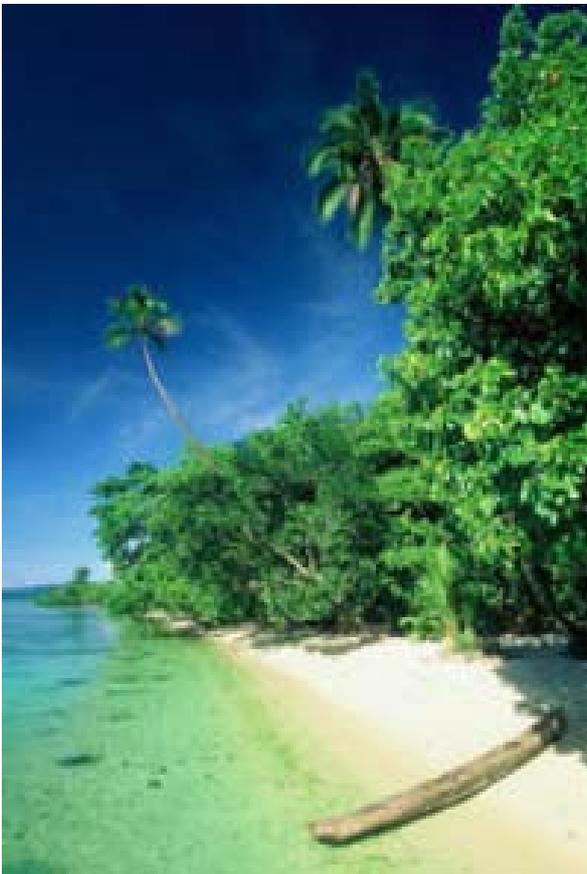
I had no preconceived ideas or expectations of what I would find when I first agreed to work in the Public Solicitor's Office in Honiara, Solomon Islands as part of Ausaid's contribution to the Regional Assistance Mission to the Solomon Islands (RAMSI). The mission proceeded under the banner of 'Helpem Fren', as combined military, police and civilians assisted to restore law and order to a country where ethnic 'tensions' that had been occurring for a number of years previously. The tensions between groups identified along ethnic and cultural lines had effectively brought the country's system of law and government and the economy to its knees.

When I first stepped off the plane at Henderson Airport I saw a sea of khaki army tents, aircraft and motor vehicles. The airport was manned by Australian army men in camouflage gear and equipped with very big guns. It was also very hot. I clambered into the 4 wheel drive that was my lift into Honiara and sat back to take into view my surroundings.

I will never forget that first drive into Honiara. There are people walking everywhere. Only white people drove the few cars on the road. Young men walked in groups holding hands, wearing colourful bandanas around their 'fros'; young women held small babes with chocolate brown eyes wrapped in lava lavas. Alongside this stretch of road to my right was the sea, the shoreline crammed with little black bodies playing in the surf. When I looked a little further out, I could even see an occasional dugout canoe being paddled into shore.

I was engaged by the Public Solicitor's Office with 5 other ex-pats to work as practising solicitors undertaking advice and case work in the areas of civil, criminal and family law. There was a back-log of cases that had been put 'on hold' during the tensions. I was told stories of how solicitors would send out a letter of demand and then wait anxiously for 2 months before commencing any further action, to see if there would be any recrimination. Recrimination usually took the form of a respondent attending the office with a gun 'looking for the solicitor'.

*Continued on Page 12*



In front of the jetty at Charapoana Passage

## Gender Issues In Law Firms

Jennifer Balrouney SC, President, Australian Women Lawyers



Women have been graduating from law schools in equal or greater numbers as their male counterparts for over 10 years. In Victoria, since 1984, the number of female solicitors has risen by 377 per cent, while male numbers have grown by only 54 per cent. In NSW, since 1984, the number of female solicitors has risen by 607 per cent, while male numbers have grown by only 72 per cent. However, of all the partners in Victoria, women make up 14.26 per cent. Of all the principals in NSW, women represent 17.1 per cent. The old "pipeline" or "it's only a matter of time" theory is not borne out by the facts.

Women solicitors are still hitting "glass ceiling" or are experiencing "sticky steps" on the career ladder. Instead of progressing upwards, women lawyers remain 'clustered at the entry and associate levels and are generally leaving law firms without becoming partners.' There is anecdotal evidence that women are often confined to less interesting work, and even that where female partners are to be found 'their authority is often more ostensible than real.'

However, what professional firms *are* realising is that losing women is costly. In fact, in 1998 the cost to a large firm of replacing a fourth year lawyer was estimated to be \$145,000. Law firms experience their largest attrition rates of lawyers at senior associate level. It seems that there are two main reasons for this exodus. The first is that this is the level where partnership and family aspirations collide. The second is that some senior associates observe what is going on in the corner office (inhuman working hours and relentless stress) and they do not want it. Neither of these are necessarily "women's issues". Increasingly men are taking on an equity partnership in the day-to-day raising of their children, or simply opting for a work life balance that will not accommodate partnership demands.

However, the pyramidal nature of women's participation in law firms indicates that law firms must do more to stem the flow of women from their middle ranks. The fact is that women bear children and, generally speaking, also bear the main responsibility of attending to their children's needs. These needs are obviously most intense when the child is newborn. However, it is important to bear in mind that there are only 181 school days in a year. Thus, the issue does not disappear when the children go to school.

In my opinion, what is required to address this issue is genuine cultural change. We hear this said so often, but what does it really mean? The best answer that I have yet seen comes (perhaps surprisingly) from McDonald's. Currently 43 per cent of senior managers at McDonald's Australia are women, with five women in key line management positions. CEO Guy Russo recently spoke about the commercial benefits of making the workplace friendlier to women, and about the work/life balance generally. Mr. Russo said that he used to believe that once equal opportunity policies were in place 'it was simply up to individuals to make their own way in corporate life, as best they could.' He did not think that women or any other group faced any unique obstacles. After becoming CEO he said looked at the numbers of women in senior places from a 'new perspective [and]...realised something was wrong.'

Mr. Russo responded by promoting women on maternity leave to top jobs, hiring women who were pregnant, assisting with childcare, providing flexible work arrangements, offering paid parental leave and by introducing mentoring more broadly. However, he found that 'men and women were reluctant to take advantage of the work/life programs already in place, because they felt guilty about being away from work.' He realised that role models were necessary for there to be a real cultural change. As CEO, he felt it was his duty to set the example. *Continued on Page 11*

## Cling Wrap And Sawdust And A Challenge For The Legal Profession: Bullying Has No Place In The Legal Workplace

By Victoria Hiley

*Victoria Hiley is a solicitor with Toomey Pegg Drevikovsky in Sydney and a member of the Law Society's Legal Workplace Committee.*

The Legal Workplace Committee and the Law Society of New South Wales are seeking to bring about a change in culture, where necessary, in the legal profession so that bullying is recognised and acknowledged as having no place in the legal workplace.



In February this year, the Legal Workplace Committee began work on "the bullying project" in response to complaints of bullying from some members of the profession. The following are examples of the complaints that the Committee has received:

- the deliberate withholding of work from a particular lawyer by a more senior member of staff so that that lawyer could not meet his or her budget and thus ended up having to find another job;
- the spreading of malicious gossip about a co-worker which spoilt the co-worker's chance of a promotion;
- the repeated and targeted harassment of an employee in order to make him or her resign;
- a more senior member of staff continually asking an employee questions such as "tell me why I shouldn't just get rid of you?";
- a senior member of staff repeatedly "auditing" a lawyer's files in order to find something upon which to justify terminating the lawyer's employment.

At first blush these may not seem to be clear cases of bullying, based as they are on behaviour that operates at a psychological level. However, they certainly fit within the definition of bullying that has been adopted by the Law Society of New South Wales (note that there is, as yet, no statutory definition of bullying in New South Wales):

"The less favourable treatment of a person by another, or others, in the workplace which may be considered unreasonable and inappropriate workplace practice and which includes behaviour that intimidates, offends, degrades, insults or humiliates a person and is behaviour which can be physical or psychological in nature." *Continued on Page 13*



## "Money Makes The World Go Round"

Marilyn Bartole, NSW WLA

Marilyn Bartole, President of Women Lawyers Association NSW and NSW AWL representative, was a speaker at the International Bar Association's conference in Auckland in October 2004.<sup>(1)</sup> The Women's Interest Group session entitled "Money Makes the World Go Around" was chaired by Women's Interest Group Co-Chair Claire Miskin and speakers included Diana Kempe QC, Selinda Melnik, Salli Anne Swartz and Marilyn Bartole. Here Marilyn shares with us some of the issues and tips that were raised during the session.

In considering the statement "Money Makes the World go Around" in the context of women lawyers I turn first to the factors which are important to women lawyers in their working lives. In our society two of the main measures of success are our income and assets. Money, however, is but one measure of success for women lawyers. Tied up with making money are issues of pay equity, promotion and partnership. Other important factors for women lawyers which are equally if not more important than money include work satisfaction, being able to do a job well and not cutting corners, making a difference, doing pro bono work, flexible work practices, status and respect.

A "desire to make a difference" is the reason why many women undertake a law degree and this desire also underpins the career choices that they may make throughout their working lives. Many women, particularly at university level have a strong interest in human rights law and in family law. It is irksome to me that these areas have been considered by some to be "soft options" because in fact they are areas of practice that strike at the very core of our society. They affect our personal rights, freedoms and our daily interrelationships with our families. What could be more important?

Practice in the areas of human rights and family law is often undertaken pro bono by private practitioners and/or through legal centres and legal aid funding. Women make up a significant proportion of practitioners in legal centres, in government legal aid and in areas of practice which are less lucrative than say practice in commercial law. Women lawyers deserve and expect to be remunerated at the same rate as their male counterparts for equal work, but is this currently the case? Statistical information from the NSW Law Society's Mercer Cullen Egan and Dell Remuneration and Work Conditions Survey 2004 found in their study of 1,026 solicitors that average wages varied between female and male solicitors as follows: Corporate Sector male \$147,716 and female \$111,120; Private Sector Male \$89,588 and female \$66,654 and Government Sector male \$74,952 and female \$65,710.

Traditionally women have done and continue to do much unpaid work, however, this is not nor should it ever be an excuse for continuing pay inequity! Lack of seniority or youthfulness of women lawyers in the profession does not provide an answer for why women earn less than men even at entry point into the profession! The NSW Law Society's 2002 report "After Ada" cited the annual income of solicitors who had less than one year's work experience since admission, for males it was \$53,500 and for females it was \$45,300, a difference of \$8,200! There is no justifiable explanation for such a variation.

One of the factors that contribute to women earning less than men as they progress throughout their careers is the impact of their responsibilities as carers of children and/or parents. The need for our legal workplaces to incorporate more flexible work practices to take account of career breaks and the family responsibilities of women is a key matter to be addressed in remedying gender and pay inequity. There can be a tendency to question women's dedication to their work if they seek to balance work and care responsibilities. This often ignores the very real dedication and tenacity of these women and their exceptional organisational and legal talents.

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## China, Weetbix and Law?

Sara Wedgwood, Solicitor, Australian Capital Territory

Secretary to the Women Lawyers Association of the Australian Capital Territory Inc. by night and Commercial Lawyer at the Grains Research & Development Corporation (GRDC) in Canberra by day, Sara recently returned from a study tour of China. This is her story...

The breakfast table at the home of my childhood was a consistent, reliable, and much loved safe harbour in a world of rapid change. The jumble of daily newspapers under hot mugs and cold juices, toast barely visible beneath the lashings of sweet colourful spreads, an array of cereals, and warm milk. Every morning the box of Weet-Bix™ was in my place setting with a bowl and side jug of warm milk.

Weet-Bix™ is an Australian produced wheat cereal biscuit served in many Australian homes as the first meal of the day. The product lists wheat, a high export earning commodity for Australia, atop its list of ingredients.

The breakfast table at my adult home is vastly different to that in my childhood memories - life is about change, and the foods at my breakfast table nowadays change as frequently as the faces! None are as reliable as my old friend - Weet-Bix™.

Late last year I sat alone balancing breakfast bowl and newspaper, and happened across a media article inviting comment on a bi-lateral trade agreement with China. It prompted me to ponder options for the sustainable production of my old friend in China.

Twelve months later I bless (and curse) that breakfast table moment. It sparked an adventure that involved a massive amount of private research into: the economic arguments that both support and challenge the perceived opportunities associated with exporting the intellectual property in Australian wheat varieties to China; and the international legal framework, and domestic laws & regulations of both Australia and China that assist as well as frustrate such trade. My cussing commenced earlier this year as I sought to squeeze all of this information into a mere fifteen thousand word LLM dissertation submission!

But blessings were also plentiful. Just as my enthusiasm for jumping on a plane was beginning to lag and the challenges associated with actually meeting some of my Chinese e-mail friends seemed insurmountable I met with the recently appointed Lecturer and Convener of Master of Laws at the School of Law of the University of Canberra, Dr Xiang Gao. Dr Gao was a Judge of the Supreme Peoples Court of China before coming to take up his current position at the University. Dr Gao's eyes lit up when we discussed my chosen topic and plans to travel to Beijing and through parts of the North China Plain. At last I had met an equally enthusiastic mind to share my study plans, and adventures with!

I departed for China mid September and spent just under three weeks drenching myself in the culture, business & farming practices, and heritage of the Chinese.



Sara at the Palace Museum, Beijing



Sara Wedgwood at the Great Wall at Badaling

As most of China's wheat production comes from the North China Plain it made sense to base myself in Beijing and tour the 3 provinces (over 5 days) that constitute most of this area - Henan, Shandong and Hebei. These provinces collectively account for over 50% of China's

wheat output. I also spent a day trip in Tianjin. This fourth-largest city in China is Beijing's port and is officially a special municipality belonging to no province. Tianjin is nicknamed 'Shanghai of the North' because of its history as a foreign concession port, its Europeanised architecture and its impressive industrial output.



Ministry of Agriculture Building, Beijing

I gratefully acknowledge the assistance and support of my employer, the Grains Research & Development Corporation, and the University of Canberra, without which I would perhaps not have pursued this trip. Also thanks to the staff of the Australian Embassy in Beijing, particularly Mr Chris Brittenden (ACIAR Office), and my friends at the PRC Ministry of Agriculture staff.

## Patti Chong of Counsel Throws Away The Locks for \$102,000.00

By Alicia Russo, Projects Officer, Leukaemia Foundation



Ms Patti Chong is a Crown Prosecutor with the Office of the Director of Public Prosecutions. Prior to March 2004, she was as well known for her thick, black, almost 30cm vertical head of hair as she was for her legal prowess.

Ms Chong registered her interest in participating in the Leukaemia Foundation's World's Greatest Shave for a Cure campaign in February 2004.

Word of Ms Chong's plans to shave her head quickly spread throughout the media, attracting regular coverage in The West Australian and community newspapers.

While the Leukaemia Foundation was obviously thrilled to have such a high profile female lawyer with extraordinary hair shaving for their annual campaign, never in their wildest dreams did anyone imagine she would have raised (to date) \$102,000 for the cause and hold the title of the 'Highest Individual Fundraiser in Australia' for the World's Greatest Shave 2004.

While Ms Chong's success is the result of a large number of factors including the generosity of the men and women of Western Australia, the main reason that Ms Chong was such a successful fundraiser for the Leukaemia Foundation of WA was the woman herself.



Ms Chong worked tirelessly as a fundraiser and an ambassador for the Leukaemia Foundation while she was collecting sponsorships for her head shave. She used her network of contacts to solicit donations and she even approached well known local businessmen and women to support her shave. She very rarely accepted no for an answer.

Ms Chong was a true believer in the cause and she really wanted to make a difference in the community. The \$102,000 she raised has certainly made a significant difference to the lives of those patients and their families living with leukaemia, lymphoma, myeloma or a related blood cancer.

For the Leukaemia Foundation of Western Australia, Ms Patti Chong is a fundraising blessing disguised in a lawyer's robe.



## Thought Of Practising In The Solomon Islands?

Continued from Page 6

One of our solicitors, Rawcliffe, was forced to escape through a back window of the Office. He headed with his family, out of Honiara and back to his home village where he lay low for about 4 months before returning to work.



This problem was not uncommon throughout the legal community and so for a period of 2-3 years, there were next to no case entries in either the Magistrates or High Court. Prosecutors were too afraid to prosecute wrongdoers and Magistrates fled to the safety of their home villages, leaving the courts deserted. Militant groups formed and exercised fear and control over people in Honiara and throughout Guadalcanal. The prisons were opened and the armouries ransacked.

Needless to say, when the Public Solicitor's Office reopened for business, we were inundated with work. The office itself was a circa 1960 deportable building attached to the Post Office. There were not enough desks or computers to accommodate the number of solicitors. This didn't really matter because even if you did get a chance to access a computer, the power would fail. We had a system of work whereby each solicitor created their own workload and undertook whatever work was necessary to the case. Every Wednesday was 'Legal Clinic' day where people would come to the Office for an appointment with a solicitor in the hope we would take up their case. It was bedlam, complete chaos. We would have something in the number of at least 70 people turn up and would wait all day, if need be, to be seen. Some of these people had been walking for 3 days to get to Honiara to see a solicitor and so the pressure to try and see everyone was immense.

The work undertaken on behalf of clients was varied and gave an insight into the cultural and personal issues Solomon Islanders face. I was impressed by how the country relied on a 'wantok' system of local allegiances and obligations, to overcome the complete absence of any social welfare system. There were never any cases of neglected children or people sleeping on the streets. However, this same system of 'wantok' placed huge burdens on family/village members to financially support large numbers of people. It also created its own difficulties when cultural obligations came into conflict with the imposed Western machinery of law and government where impartiality and objectivity are preferred values.

I was intrigued by the way in which village chiefs maintained the role of lawmaker and arbiter of conflict within the village, cultural law having been entrenched within the Solomon Islands constitution and continuing to coexist with traditional English law. I participated in a number of travelling Magistrates Court circuits to outer-lying Island groups and provinces where the magistrate, prosecution and public solicitor engaged with the local chiefs and elders to resolve civil and criminal matters.

The role and position of women varied throughout the different provinces. In some provinces such as Isabel and Western province, tradition and land was passed through matriarchal lines. Here, you would find the occasional female chief. Often women who were educated and held positions of responsibility in law, finance and government in Honiara were ultimately from these areas. This contrasted dramatically with the women from Malaita, where women were much more restricted. Customary laws relating to bride price, compensation and the ownership of children still

I think that myself and the other female solicitors were very important to the local women. It was apparent by the way that the numbers of women seeking assistance increased dramatically once word spread that we were here. Attitudes to violence and protection from the courts and police were similar to that experienced 30 years ago. Indeed, much of Solomon law (based on English law) had not changed since independence in the 1960's.

It felt like everything I did was an enormous challenge. Within a few months I was speaking Pijin English fluently enough to properly represent people in court, without an English interpreter, where instructions, evidence, submissions, the works was in Pijin. I threatened to take on large multinational logging corporations who were ripping off villages; I appeared before the Magistrates Court, the High Court, and the Trade Disputes Panel; I appealed against inappropriate and unjust sentencing and police practices. I took my life into my own hands every time I travelled by public transport and tasted the attempts of a local to make a cocktail. It was an experience I will never forget, nor regret.

I hope that I helped in some small way towards the recovery of justice, law and order in the Solomon Islands. I have left behind me a number of wonderful friends and an overwhelming appreciation of how much work is still to be done. I have brought with me fond memories and, hopefully, an enriched perspective of some of our Pacific neighbours.



He said:

I signed up for tuckshop duty at my son's school and let everyone know about it...I've also taken to patrolling the office, looking for those in at the crack of dawn and/or burning the midnight oil – not with the aim of rewarding their dedication but with the aim of finding out if we have a problem with people working excessive hours.

Mr. Russo's experience underlines the fact that it is not enough simply to have EO Policies. The governing bodies of, and senior practitioners in, law firms must take responsibility for making these policies *work*. So long as a lawyer is meeting the clients' needs and the firm's financial imperatives, it does not matter when, how and where they work. This is particularly so when the Internet, remote access email and call diversion means that the clients can be serviced (to a large extent) from home.

Firms should also do more to acknowledge that *all* their lawyers, be they graduates or senior partners, have a life outside the firm and are part of a family. The firm's internal newsletter could contain a section devoted to celebrating achievements outside the firm. Thus, the graduate could mention when his basketball team made the finals, the senior partner could proudly announce the birth of his granddaughter and the associate could mention the fact that she had won a golf competition on the weekend. The banking and finance partner who steadfastly refuses to contribute to this section of the newsletter could be encouraged to do so. This can only stimulate firm networking. It might even encourage staff to "work better not longer." In short, the firm should actively cultivate a culture that respects that people have a life outside work.

In addition, there are a number of practical measures that some firms are introducing in order to stem the costly attrition of senior associates:

- Encourage acceptance of flexible work practices as "the norm", not just as measures to assist certain staff in particular circumstances;
- Allow staff to swap pay for leave;
- Ensure that business development events are offered to all staff. Do not assume that some staff are not interested in the football or are only interested in fashion parades;
- Do not patronise single sex clubs for staff or client functions – it is demeaning to those who are denied membership of that club on the basis of their gender;
- Schedule training and staff meetings at lunchtime;
- Ensure that those staff on parental leave still feel that they are a valued part of the firm – perhaps by having regular lunchtime meetings with them;
- Ensure that those staff who have decided against taking up a partnership in favour of a "special counsel" or a "consultant" role are not denigrated (explicitly or implicitly) for making this choice. These individuals pay the financial price for this decision – they should not also have to pay an emotional price;
- When evaluating staff on "merit" – which is seen as an outcome of performance and potential, ask whether each candidate has had an equal opportunity to demonstrate their performance and potential. If one lawyer is always asked to accompany a partner to client entertainment events, to the exclusion of other lawyers, that partner will naturally be inclined to think that the lawyer he or she knows best will be better suited for promotion. However, other staff may simply not have had the same opportunity to demonstrate their performance and potential.

Undertaking such initiatives should not be viewed as wasted expenditure.

As recently retired CEO of Middletons, John Chisholm recently said:

"Have a good place to work, keep and attract the best possible people and the best possible people do great work. The dollars come after that, but it is put in that order."

**"Money Makes The World Go Round"**

As at October 2004 7% of women and 28% of men in the profession identified as partners of NSW law firms, women at the NSW Bar comprised 16.4% of Junior Counsel and 4.5% of Senior Counsel based in NSW hold NSW practising certificates. In effect, more women than men are employees rather than self employed lawyers.

Diana Kempe QC (Bermuda), a former and the first female President of the International Bar Association had some important tips for women who intended to set up their own businesses. She emphasized the need to obtain knowledge about how to run a business and suggested undertaking a degree or other training program in business. Working for someone else first was recommended in order to learn how a law firm business operated. Asking a prospective employer for information about the financial side of their business may indicate whether they have sound financial policies. Your questions could include queries about billing policies, hourly rates and what the firm expects you to earn for them. Diana stressed the importance of obtaining financial advice from an accountant when setting up a practice to assist with decisions about capital expenditure, business planning, cash flow and wages. She also emphasized the need for women running their own legal business to ensure that they ask for money on account rather than to be caught short after having carried out significant work for clients and expended other resources! She also suggested the possibility of finding other practitioners with whom to share infrastructure expenses to reduce set up costs.

Women are often focused on the "service" that they provide rather than concentrating purely on the business dollar. A job well done is often more important than amounting billable hours. This doesn't mean that women waste time but it can mean that they take more care in carrying out their work and it can also mean better results for clients.

In discussing the economic empowerment of women Selinda Melnik (USA) the founder and first chair of IWIRC emphasized the advantages of creating an interdisciplinary network of women to give each other work and of joining women's groups that were dedicated to women helping each other. She highlighted the importance of networking and gave a practical example of how exchanging business cards as a commitment to give business to one another and that women should not regard each other as competition. In giving women work she could trust that her clients would be well taken care of that this would also reflect well on her firm.

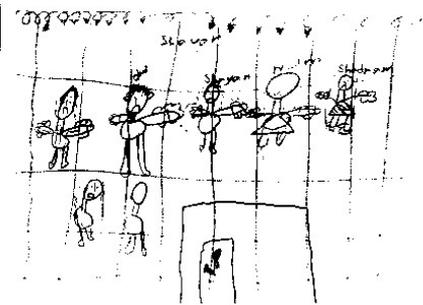
Salli Anne Swartz (France) has been a practising international commercial Lawyer in Paris since 1979. Salli Anne focused on how to get the money you deserve. Her tips included finding out what income others are making, understanding what it is that you are bringing to the table, what you are producing for the firm and utilising client feedback. Importantly, in asking for more money YOU must be convinced that you are worthwhile in order to convince others that you should get the raise!

Some of the issues discussed during the session had been said and heard before, however, there is value in repeating them for those who have not heard them before and to remind ourselves of the progress that has been made and will continue to be made. In 1950, two years before the Women Lawyers Association of NSW was formed, there were 15 female solicitors in NSW comprising 1% of the profession. In 2002 there were 6,143 female solicitors practising in NSW comprising 36.6% of the profession.

In 2002 women comprised approximately 34% percent of all solicitors nationally, 14.7% of all barristers nationally and over 50% of students entering law faculties were women. The growing numbers of women practising law will give women increasing opportunities to influence and change work practices. What has been an essentially male legal culture in the past can be made more relevant to the needs of women and men as a whole. As a woman lawyer you can and will contribute to these changing processes.

## Claim By A Child Asylum Seeker Against The Commonwealth & Detention Centre Operators For Psychiatric Injuries

Rebecca Gilsenan, Senior Associate, Maurice Blackburn Cashman



This is the first case in negligence against the Commonwealth and the former detention centre operators by a child asylum seeker seeking damages for pure psychiatric injury suffered during and as a consequence of detention.

The plaintiff, Shayan Badraie, arrived in Australia with his family in 2000 from Iran seeking refugee status. Shayan was 5 years old when he arrived with his family at Ashmore Reef, after an uneventful journey by boat from Indonesia. Shortly after arrival the family sought protection visas on the basis that they had been persecuted in Iran because of their membership of a religious minority.

First the family were detained at Woomera Immigration Reception and Processing Centre in South Australia and then at Villawood Immigration Detention Centre in New South Wales. Shayan was in detention centres for a period of 18 months. During that time Shayan lived in an environment that was physically harsh, populated by despairing adults, prison like, without proper educational facilities or health care and he witnessed a number of traumatic events such as riots, fires, water cannons, a man bleeding profusely from his just slashed wrists and another man, who had climbed the only tree in Woomera, threatening to jump to his death.

The family's application for (temporary) protection visas was granted in August 2002, 2 years and 5 months after the family arrived.

During the period that the family's application for protection visas was being considered by the tribunals and courts the family were detained at Woomera and then at Villawood. Shayan's half sister was born at Woomera. Shayan's mother became clinically depressed, Shayan's father became desperate about his family's situation and Shayan's psychological state deteriorated to the point that he was mute, he did not eat or drink, and he became hospitalised for extended periods of time.

In August 2002, when the family was granted temporary protection visas, they were reunited in the community. Shayan's mother is now studying and Shayan's father works intermittently. Shayan's half sister Shabnam is a robust and outgoing four year old. Shayan on the other hand, to quote Dr Jonathon Phillips, who assessed him for the purpose of these proceedings;

*.... is an eight year old boy who is now traumatised to an extreme degree by the fact that a very substantial portion of his life has been spent in immigration detention camps in Australia...He suffers significant and now chronic psychopathology from which he is highly unlikely to recover....SB most unfortunately has experienced the critical years of his childhood in a way almost completely different to virtually all other children in this country...He has been housed for much of his lifetime in isolated and generally barren environments, he has lacked all normal freedoms, he has been surrounded by a mixed community of demoralised and angry adults and he has been denied the usual open educational opportunities taken for granted by the rest of the population. ... He presented as if he were a little old man carrying the burdens of life... His affect was flat, distant and unreactive. He lacked entirely the spontaneity characteristic of childhood years... The case of SB is particularly sad given that in other circumstances he almost certainly would have undergone a normal process of development and would have had the skills to progress to a normal adult life. This will no longer occur.*

Shayan's family were placed in immigration detention at Woomera in March 2000. At that time it was summer, it was stiflingly hot, the detention centre was overcrowded, the tension was high and the population of the detention centre soon erupted into riots.

At Woomera Shayan experienced a number of traumatic events including rioting behaviour, tear gas and the use of water cannons; self harm by other detainees, such as setting themselves on fire and performing hunger strikes; acts of violence and intimidation on the part of the defendants towards his family and other detainees; relocation to Sierra Compound (an area perceived by detainees to be a punishment area) and separation from children his own age.

Shayan very soon began to exhibit symptoms consistent with posttraumatic stress disorder.

On 25 January 2001 the first formal psychological assessment of Shayan took place. An ACM psychologist concluded that Shayan was evidencing symptoms of PTSD.

In March 2001 the family was transferred to Villawood. Shayan witnessed further traumatic events including self-harm by other detainees, in particular seeing a man bleeding profusely from his just slashed wrists and acts of violence between detainees and staff.

Shayan continued to exhibit symptoms of PTSD. His fragile state began to deteriorate further. Shayan was first admitted to the Children's Hospital at Westmead, on 3 May 2001. Between May and August 2001 he was hospitalised on 8 occasions, for a total of 86 days.

Shayan's treating doctors at Westmead sent a number of reports and letters to the Department of Immigration, Minister Ruddock and to the detention centre operators. In those reports the doctors attributed Shayan's symptoms to the detention environment and the events that he witnessed in that environment. They repeatedly warned that Shayan could not recover if returned to that environment and, that if he were returned, his symptoms would worsen to such a point that he might not recover. The doctors further warned that separating Shayan from his parents and placing him in foster care, an option then being considered by the Department, would be highly inappropriate, traumatic and potentially damaging from a psychological point of view. On 23 August 2001, 2 months after the doctors warned about the potentially harmful effects of foster care, Shayan was placed in foster care, separated from both of his parents and his half sister. On 8 January 2002 the placement broke down. Shortly after the Minister exercised his power to grant bridging visas to Shayan, his mother and his half sister to allow them to live in the community.

While Shayan was placed in foster care his father made a complaint to HREOC. Mr Badraie alleged that certain acts or practices that occurred in connection with the detention of Shayan at Woomera and Villawood were inconsistent with, or contrary to, Shayan's human rights.

HREOC found that the Commonwealth had breached a number of articles of the Convention on the Rights Of the Child (the CRC), including the article which requires state parties to take steps to protect a child from violence, abuse, negligent treatment etc, while in the care of parents; the article that requires state parties to ensure that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs of



Top: Saeed & Zahraa Badraie  
Bottom: Shayan Badraie

persons of his or her age; the article which provides that in all actions concerning children, the best interests of the child shall be a primary consideration; the article that provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily and the article that provides that state parties shall ensure that a child will not be separated from his or her parents against their will, except when competent authorities determine that such separation is necessary for the best interests of the child.

HREOC made a number of recommendations including that the Commonwealth pay the amount of \$70,000 by way of compensation and apologise to Shayan and his family. The Commonwealth did not accept the findings that there were breaches of Shayan's human rights and so claimed that the "issue of financial compensation and apology does not arise".

Given HREOC's findings in relation to the breaches of Shayan's human rights this case might be an appropriate vehicle in which to argue that human rights standards should be taken into account in determining the content of the duty of care owed by the Commonwealth to Shayan. The relevant standards in this case would be those set out in the CRC. The CRC is the most widely ratified convention in the history of the United Nations and, in 1990, Australia voluntarily committed to comply with its scheme of rights and responsibilities in relation to the treatment of children.

So why not, in considering what is reasonable conduct, especially in relation to the conduct of the Commonwealth, refer to the standards of behaviour required by human rights instruments to which Australia is a party? Since the standard of care in negligence is determined by reference to community valuations, considerable weight attaches to whether or not conduct conforms to standard practices accepted as normal and general by the community. A failure to act in accordance with a general practice is often a strong indication of a want of care, because it suggests a failure to do what others consider proper. In this case, the Commonwealth's proven failure to do what the international community considers proper in relation to the treatment of children is a strong indication of a want of care for the purposes of the claim in negligence.

Shayan's case will be heard by the NSW Supreme Court towards the middle of 2005.

**Cling Wrap And Sawdust And A Challenge For The Legal Profession: Bullying Has No Place In The Legal Workplace**  
*Continued from Page 7*

### **A challenge for the Legal Profession**

When the Legal Workplace Committee began work on the bullying project there was little case law in relation to the problem of bullying in the workplace other than a few unfair dismissal claims, pursuant to s.84 of the Industrial Relations Act 1996 (NSW) ("the Act"), after employees had been driven from the workplace as a consequence of bullying. A small percentage of these matters involved law firms. In these cases bullying was referred to in passing, as a component of the "unfairness" associated with a termination of employment which in part determines the level of compensation that is awarded.

However, in June this year, as a result of a case decided by the Chief Industrial Magistrate – summarised below – it became clear that employees who are bullied may lodge a complaint with WorkCover which may prosecute the employer for breach of the Occupational Health & Safety Act 2000 (NSW) ("the OHS Act"), which requires employers to ensure the health, safety and welfare at work of all employees.

### **Cling Wrap and Sawdust**

In late December 2001, 16 year old labourer Dwayne Doyle got more than he bargained for when he was subjected to an "initiation ceremony" at work. This initiation involved Doyle being cling wrapped to a trolley, having sawdust and wood glue forced into his mouth – which was subsequently hosed out with a fire hose when he began to cough and splutter – being spun round on the trolley, and then pushed dangerously close to an open edge that was approximately 4.2 metres above the ground.

In handing down his decision in the Doyle matter, the Chief Industrial Magistrate stated: "A bullying culture has been known to exist in some workplaces, often seen as a bit of fun at the expense of someone else. It is a culture that needs to be stamped out. Bullying has no place in the workplace".

The company that employed Doyle was fined \$24,000 for failing to provide a safe workplace for Doyle, and two of the directors of the company were fined \$1,000 each: one for allowing the initiation to go ahead, the other for failing to supervise the misbehaving employees adequately.

While the bullying in Doyle did not occur in a legal workplace and was extreme and physical in nature it is likely that employees who are bullied in a legal workplace may now also seek redress via the OHS Act; particularly in light of the definition of bullying that has been adopted by the Law Society of New South Wales. While the definition of bullying adopted has no legal impact on how the Chief Industrial Magistrate interprets the obligation of employers, the fact that the Law Society has adopted the definition may assist the prosecution to establish that the employer should have known of the potential risk to the health and safety of employees posed by both physical and psychological bullying.

The developing case law in relation to bullying presents a clear challenge to the legal profession to be aware of, and take steps to prevent, bullying in the legal workplace. The decision in Doyle may also have implications in terms of liability for partners in law firms and human resources personnel who "turn a blind eye" to, or facilitate, bullying in the workplace.

### **Bullying has no place in the legal workplace**

In light of the complaints outlined above and the outcome in Doyle, in September this year the Legal Workplace Committee released a CD Rom with the aim of raising awareness of bullying in the legal workplace. The CD Rom included law-firm specific examples of bullying, detail the emotional and financial costs to the profession of bullying, provide information on how to recognise and prevent bullying, give details on avenues of external redress when a complaint of bullying has not been dealt with by the employer, summarise recent case law in relation to bullying, and set out examples of behaviour that is not bullying.

The CD Rom may be used for the purpose of educating staff and assist employers to comply with their duties pursuant to the OHS Act. The CD Rom has been designed so that it can also be used by individual staff members.

The Legal Workplace Committee and the Law Society of New South Wales hope that the CD Rom will help to facilitate a culture of zero tolerance of bullying in the legal workplace. The presentation is also available on the Law Society website.

## State of the Nation

### Australian Capital Territory

WLA ACT held a series of breakfast functions with speakers including John Stanhope, ACT Chief Minister, Bill Redpath, President of the ACT Law Society, and a number of women from the ACT Bar.

Members met with Pru Goward, Federal Sex Discrimination Commissioner and Helen Watchirs, ACT Commissioner for Human Rights who spoke about the 20th Anniversary of federal sexual discrimination legislation and the introduction of the ACT Bill of Rights respectively.

WLA hosted a successful Law Week Dinner in May 2004, at the National Museum and were privileged to hear from Dawn Casey, former Museum Director. WLA also collaborated in the organisation of the Professional Women's dinner in June.

A representative of WLA participated in the Australian National University Women in Law forum. WLA has also been working with the Deans of the ANU and Canberra University to establish a prize at each institution for a female undergraduate student undertaking a law degree who's participation in her studies exemplifies a commitment to equality before the law and the protection and promotion of the interests of women in the legal system and the profession.

ACT WLA welcomed Jennifer Batrouney SC to a meeting with members in June and viewed the short film "Raising the Bar".

The ACT government has announced that it will adopt a model briefing policy for ACT government work and the Law Society invited the Association to advise the Council on the Sex Discrimination Commissioner's maternity leave proposals. At the initiative of WLA and Australian Women Lawyers, the ACT Supreme Court has also agreed to undertake a survey of appearances by Counsel before the Court.

WLA in ACT would like to thank two retiring officers of the Committee, President and Law Society Council representative, Linda Crebbin and Amy Burr, the most efficient and good-humoured Secretary that the Association could hope to have. Both Linda and Amy will continue to assist the work of the committee as co-opted members.

### Victoria – Victoria Women Lawyers.

Victorian Women Lawyers have had a fulfilling and busy year in 2004. Valuable relationships were cemented with the Women Barristers Association. VWL, AWL and WBA held their first joint function at the Federal Court when Professor Eileen Kaufman of the Jacob D Fuchsberg Law Centre at Touro College, gave a seminar about her study of changes in the law in India and the subsequent empowerment of women there.

WVL and WBA held a very successful "meet and greet" function, which involved grouping solicitors and barristers into their practice areas and quizzing them about women in the law. It is intended to hold the event annually.

In March, VWL held its Dame Roma Mitchell Luncheon, at which Mary Gaudron spoke with passion about the rule of law and the invasion of Iraq. The event was attended by over 450 people.

In September, the Victorian Attorney General, the Honourable Rob Hulls, launched VWL and WBA's mentoring programme for the mentoring of Melbourne University law students. It is hoped that these mentoring relationships will grow and strengthen as the participants get to know each other and as the students move into the profession.

WVL is progressing its study of women working flexibly in senior positions in the profession, gaining an insight into how they are able to manage their work and other commitments, what support they get or are lacking and the success or otherwise of working flexibly. VWL hopes that the report that will be generated by focus groups will debunk some of the myths about working flexibly and draw out the ideas and systems used that work well.

### Victoria – Women Barristers Association

WBA has approximately 100 members and seeks to represent the interests of the 270 or so women at the Victorian Bar. The last six months have included the following:

**EO Policy:** Meetings with various solicitors' firms encouraging them to adopt the E.O. Briefing Policy and to ensure that their solicitors are truly giving consideration to utilising the services of women at the Bar. Mallesons, Clayton Utz and NAB have hosted drinks with WBA for women barristers practicing in relevant areas. On 20 August 2004 the Australian Financial Review published a letter the Convenor wrote drawing attention to the lack of Commonwealth legal funding going to female barristers and calling on the Commonwealth A-G to adopt the E.O. policy.

**Mentoring:** With VWL we have set up a mentoring program matching up female Melbourne University students with female barristers and solicitors (launched by the Victorian A-G, Mr. Robert Hulls.) We continue to encourage mentoring relationships between women at the Bar.

**Meet 'N' Greet:** We had a marvellous party for about 170 female solicitors and barristers encouraging women in the law to support each other.

**Seminars:** We conducted a seminar about sexual trafficking of women and one advising barristers about the information solicitors want to see on the internet about them (when searching the Victorian Bar website at [www.vicbar.com.au](http://www.vicbar.com.au)).

**Networking:** We have had drinks celebrating new female appointments (including our Chief Justice Marilyn Warren, and Solicitor-General Pamela Tate) and female silks, and others welcoming the 2004 Readers to the Victorian Bar.

### New South Wales

WLA NSW has held a record number of functions in 2004 (an average of 4 per month). Mentoring has been a focus of this year's strategic plans in both Sydney and Newcastle. NSW women lawyers have demonstrated exceptional enthusiasm in taking part in mentoring programmes for university students and practitioners.

Media interest in WLA NSW this year has increased significantly over recent years particularly in relation to issues concerning flexibility in the workplace, promotion and pay equity. WLA NSW President Marilyn Bartole has given interviews and been quoted in the Financial Review, SMH, Law Society Journal and Lawyers Weekly. TOCC Chair Juliet Bourke has been interviewed by Sally Loane on ABC radio, written an article for HREOC and given interviews to VIVE for two published articles. WLA members have been interviewed and/or profiled for VIVE magazine, 2SERFM radio, Sydney University Students Association newsletter and Lawyers Weekly.

The President has been invited to speak at a number of events/seminars this year including the IBA Conference New Zealand, North Metropolitan Law Society, Sydney University Mentoring Evening at Mallesons, UNSW Mentoring Evening at Freehills and Women in Chartered Accounting. In addition, WLA Committee members and/or members have as in previous years taken part in the Sydney Law Careers Fair, various school and university presentations and mentoring programmes for female university students.

### South Australia

The Women Lawyers' Association (SA) Inc has organised a number of networking functions during 2004 including several drinks functions and a Professional Women's Dinner. SA WLA is about to have their final function for the year which is Christmas Drinks with the Judiciary. All members of the South Australian Judiciary are invited to this function which is a fantastic opportunity for practitioners and judicial officers to meet on an informal basis.

The Association has recently provided comment on a number of matters including paid family leave, employment contracts for salaried lawyers and the recent amendment to the Marriage Act which specifically excluded same sex marriages.

In September the Association applied for funding from the Law Foundation of South Australia for a project officer to conduct a survey into gender participation in the courts. This is a first step in assessing the progress women have made at the Bar and the impact of the National Equality of Opportunity Briefing Policy.

In 2005 we hope to provide more and varied networking opportunities especially for students and new practitioners, establish a mentoring programme and continue our research project on gender participation.

## Northern Territory

The key feature for Northern Territory women lawyers in the last 12 months has been the rise of women lawyers to more senior positions in the profession.

Most recently, two women Barristers were appointed Queen's Counsel, Suzan Cox QC and Raelene Webb QC. These appointments are particularly remarkable since they are the first two women QC's ever appointed to be appointed in the Northern Territory.

Notably, Carolyn Walter (Ward Keller) and Lyn Bennett (Hunt & Hunt) were promoted to Partner this year. Rhona Millar was also admitted to partnership at Minter Ellison which moved to Darwin in 2004. Sally Sievers (Cridlands) was promoted to Special Counsel. Alison Robertson and Tracy Reeves (both of Cridlands) were promoted to Senior Associate. Also, Ingrid Meier (Morgan Buckley), Nicole Dunn (Ward Keller) and Maria Savvas (De Silva Hebron) were all appointed to Associate in 2004.

The AWL Uniform Equitable Briefing Policy last year, and its sequelae, have all contributed to a new climate in the Northern Territory legal profession, and the making of these appointments.

Cathy Spurr, the Managing Partner, Halfpennys Solicitors was an entrant in the Business Woman of the Year Awards and she won the Westpac Small Business Category.

Early in the year, NTWLA sponsored one of its members, Marguerite Bowen, to attend the Mary Gaudron Seminar hosted by the Centre for Comparative Constitutional Studies at University of Melbourne. The women lawyers of Victoria made her feel very welcome and she had a fabulous time.

The new NTWLA Committee has a representative from Alice Springs. The forthcoming year will see the Committee take more of an interest in the tax deductibility of childcare, family friendly practices and the mandatory reporting of gender-based statistics on barristers appearing in significant court hearings.

## Tasmania

TWL has held various functions in the past year. Kriss Will of Kriss Will consulting spoke at the Waterline Restaurant about flexible work practices.

Kriss stressed the need for openness, flexibility, communication and the need to remember that law firms are also businesses, but that reduced turnover due to flexible work practices can be a major benefit to business.

It was a great function, well attended and was pleasing to see some of the male members of the profession join in this discussion.

Another function held at the Law Society was the launch of the TWL website <http://tasmanianwomenlawyers.trump.net.au>. The committee have worked hard to get the Web page up and running. Some of the pages are still under construction and this is an ongoing project for the committee. The function was well attended and it was great to see members of the Judiciary attending including Supreme Court Judges and Magistrates from the Court of Petty Sessions. The web page was

warmly received and the committee is hopeful of getting a Mentor Directory up and running soon. The committee aim to encourage and foster relationships with young, junior practitioners and final year law students and encourage them to join the association.

The TWL AGM is due to be held in December and it is intended to hold a planning day in January 2005.

## Queensland

2004 has been an eventful year for the Women Lawyers Association of Queensland. Once again, WLAQ hosted the Una Prentice Dinner at which awards were given to the top women law graduates in Queensland. On 11 November 2004, WLAQ will host its Annual Woman Lawyer and Emergent Woman Lawyer of the Year Awards. WLAQ has also recently hosted an information function for women barristers on the status National Equal Opportunity Briefing Policy ("NEOBP"), endorsed by SCAG and the Law Council of Australia, at which the "Raising the Bar" film was screened.

The NEOBP has been a key policy issue that WLAQ has pursued this year with the State Government, the Law Society and Bar Association. WLAQ will continue to work with these bodies to ensure that the policy gains traction with briefing decision-makers in both the private and public sectors within Queensland. In addition to this initiative, WLAQ has sought the assistance of the Higher Courts in conducting a gender-based appearance survey to gather statistics about the usage of female counsel in Queensland, as no such statistics have been collected in the past.

WLAQ has also worked this year to demonstrate the presence and importance of AWL to its membership. In addition to Queensland hosting the AWL face-to-face meeting in February 2004 and its regular communication of AWL activities to its membership, WLAQ has recently sponsored Jennifer Batrouney SC, the President of AWL to speak at the "Challenge, Change & Cha Cha Cha... Women celebrating 20 years of challenging and changing the legal system -- A Conference on Women, Feminism and the Law" in Brisbane. WLAQ has also welcomed Ms Batrouney's recent public comments on the issue of exclusive men's clubs in Queensland.

WLAQ membership continues to grow and it is with this in mind that our website is currently being redeveloped to improve its content, appearance and importantly, its user functions.

## Western Australia

WLWA has continued to work with the State Government, the Law Society and other agencies to enhance the status of women in the profession.

The Annual Honours Dinner in March 2004 honoured eight women appointed to the Bench, including former AWL director Justice Narelle Johnson of the Supreme Court.

The Articled Clerks' welcome in May 2004 was well-attended by members, judges and magistrates, including the heads of all of the major courts in WA.

Three junior women lawyers address the Welcome about the challenges of entering the profession, including Ngingala Yarran-Clanton, WA's first indigenous prosecutor. Ngingala has now joined the Committee of WLWAL.

The website for WLWA will be launched by Chief Justice Diana Bryant on 1 December 2004. As Her Honour was the inaugural Secretary of WLWA in 1981, it is particularly fitting that she will joining us for this event.

This year was the centenary of *In re Haynes (1904) WAR 20*, a decision in which a woman was refused admission to practice by the Supreme Court in 1904, because, being female, she was not a "person" within the meaning of the legislation. A function was held to mark her courageous challenge to the legal profession, at which the Chief Justice spoke about the case, about the achievements of the last 100 years and about the work still to be done. His speech can be read on the Western Australian Supreme Court website.

Availability of part-time work opportunities within firms continues to be a major barrier for women lawyers. A lead article, developed by the joint Women Lawyers/Law Society committee was published in Brief magazine this year on part-time work in the professions.

# AWL Board Members



**Noor Blumer, President**

Originally from Western Australian, Noor attended UWA and studied Arts before moving to Griffith NSW to study law by correspondence through the SAB. Studying and working full-time and 4 children later, Noor was admitted to practice in 1992. After moving to Canberra in 1998, Noor served for 3 years as President of WLA ACT Inc. and specialises in personal injury litigation, in partnership with her husband Mark. This

is her third year as a director of AWL.



**Jane Knowler, Vice President**

Jane is a law lecturer at Flinders University of South Australia. Her principal areas of teaching/research include Property, Equity, Remedies and Feminist Jurisprudence. Jane was admitted to practice in South Australia in 1990 and practised in commercial law – both general and litigious. She is now also the President of the Women Lawyers' Association of South Australia. Jane has just

returned from 3 months sabbatical.



**Gabrielle Martin, Secretary**

Gabrielle studied law and graduated from Adelaide University in 1994. She commenced with the Crown (SA) in 1995. She moved to Darwin over 5 years ago and a senior Solicitor for the Northern Territory Department of Justice.

Gabrielle provides advice and legal representation to government agencies mainly in the areas of administrative law, health law, employment law and anti-discrimination. Gabrielle has been President of the NTWLA since September 2003. She enjoys cinema, theatre, yoga, walking, reading and traveling and is planning to take up painting. She has two sons, 28 and 27 years old, who are both dentists, the older of whom is marrying next year in May.



**Marilyn Bartole, Treasurer**

Marilyn is President of NSW WLA. Admitted in 1985 and currently a solicitor in sole practice she plans to join the Bar. Marilyn was acting Prothonotary and Manager Court Services NSW Supreme Court (2001) and a solicitor advocate appearing for persons before the Royal Commission into the NSW Police Service, PIC and ICAC (1994 - 2004). She represented families of 16 of

the 18 victims of the Thredbo Landslide before the Coronial Inquest her most challenging case to date. Prior to 1994 Marilyn worked for Aboriginal Legal Service, Legal Aid Commission, Royal Commission into Aboriginal Deaths in Custody, GIO, Federal DPP and PIAC.



**Christine Trueman**

Christine studied at the University of Tasmania and was admitted to practice in 1999. She worked for the Legal Aid Commission of Tasmania for one year, then Murdoch Clarke Barristers and Solicitors for 4 years and has recently started a position as Associate at Simmons Wolfhagen. Christine specialises in Family Law. She served as President of Tasmanian Women Lawyers in 2003 and 2004.

Christine is also Treasurer of the Family Law Practitioners Association of Tasmania. Her pre-law background and previous work history include business, corporate banking, financial & investment areas. She has three children, two of which were born while working and studying law.



**Tracy Fantin**

Tracy Fantin is a solicitor in private practice and a member of the Qld Anti-Discrimination Tribunal. She has a BA LLB (Hons) from the Australian National University. She was admitted as a solicitor in 1988 in New South Wales and in 1994 in Queensland, and is an accredited mediator. Tracy practises in employment, planning & environment,

native title and Indigenous organisations law. She has been and is involved as a member and/or board member of many community and non-profit legal and arts organisations. In 1999 Tracy received the Inaugural Queensland Law Society Community Legal Service Award in Far North Queensland for pro bono work.



**Sarah Coffey**

Sarah was convener of Victorian Women Lawyers in 2004. Sarah is a senior associate with Middletons and is on secondment to NEC Australia Pty Ltd as Corporate Counsel, working part-time.



**Caroline Kirton**

Caroline Kirton (BA (Hons) LLB (Melbourne), LLM (Monash) completed her articles at Phillips Fox in Melbourne in 1988. She then worked as a solicitor in Mount Isa and Hervey Bay, Queensland before returning to Phillips Fox in Melbourne. Caroline signed the Victorian Bar Roll in 1990 and is currently a member of the Bar Applications Review

Committee and the Bar Reader's Course Sub-Committee. Caroline teaches at Leo Cussen Institute for post graduate legal training and is an instructor with the Australian Institute of Advocacy. Caroline's current areas of practice are general commercial, construction, property, equity, trade practices and professional negligence.



**Penelope Giles**

Penelope Giles is a barrister in Western Australia, practicing in civil, commercial and family law. She went to the Bar in 1998 after 13 years in the profession, including six years as a partner of a large firm. She has served for two years as President of Women Lawyers of WA (Inc), having stood down in October 2004. She is also President of the WA Equal Opportunity Tribunal, and a legal member of the Medical Board. In 2002, she spent three

months as a Commissioner of the District Court.



**Jennifer Batrouney SC,  
Past President**

Jennifer Batrouney is a Senior Counsel at the Victorian Bar, practising in administrative law, tax and superannuation. She completed her articles at Blake Dawson Waldron and after 3 years was called to the Bar. She signed the Bar Roll in May 1991 and took silk in 2000. She has been a member of the Law Council's taxation committee since 1991 and was a State Councillor of the Taxation Institute from 1997 until 2002. She was a member of the Superannuation Complaints Tribunal from 2001 until 2003.

She sits on various Victorian Bar committees, including the Legal Education and Training Committee and the Professional Indemnity Insurance Committee. She is assistant convener of the Women Barristers' Association and Past President of Australian Women Lawyers.