100 years of women in the law

The Honourable Justice M J Beazley AO*

To acknowledge the centenary of the Women’s Legal Status Act 1918, which allowed women to practise law in NSW, the President of the Court of Appeal reflects on the slow acceptance of women into the legal profession and some of the trailblazing women who “did it first”.

On 5 December 1918, the NSW legislature passed the Women’s Legal Status Act 1918 (NSW) (the Act). The Act was the culmination of protracted lobbying by women activists of the time, including the English suffragette Adela Pankhurst, who visited Sydney in 1914, sisters Belle and Annie Goldring, Rose Scott and Kate Dwyer. A Bill was originally introduced into the NSW Legislative Assembly in August 1916, but withdrawn as it was ruled out of order. A second Bill lapsed. The Women’s Legal Status Bill was eventually introduced on 3 October 1918 by the NSW Attorney General and barrister, David Hall. The second reading speeches indicate that the male politicians who passed the Bill were ultimately persuaded that women had “earned the right” to become lawyers and parliamentarians by reason of their “energetic public activities during the First World War”.  

The Act contained two sections. Section 1 stated the name of the Act. Section 2 provided that a person “shall not by reason of sex be deemed to be under any disability or subject to any disqualification” to be: elected and to act as a member of the Legislative Assembly, Lord Mayor or councillor of the City of Sydney, or mayor or councillor of any other area; appointed a judge of the NSW Supreme Court or District Court, the chairman of Quarter Sessions, a stipendiary or police magistrate, or a justice of the peace; or admitted and to practise as a barrister or solicitor of the NSW Supreme Court, or to practise as a conveyancer.

Sixty-two years later, in 1980, Jane Mathews became the first woman to be appointed to the NSW District Court. She was only the second woman to have been appointed a judge in Australia. Dame Roma Mitchell was the first, having been appointed to the South Australian Supreme Court in 1965. It is perhaps unsurprising that South Australia was the first to recognise the remarkable abilities of female lawyers. After all, it was the first of the Australian colonies to have granted women the right to vote in 1895. In April 1980, Leonie Glynn was appointed a judge of the NSW Industrial Relations Commission, making her the first woman in NSW to be appointed to a superior court. In 1987, Jane Mathews became the first woman to be appointed to the NSW Supreme Court, the same year that Mary Gaudron became the first woman to be appointed a justice of the High Court of Australia.

In NSW, the story of women in the law began 20 years before the enactment of the Act. In 1898, Ada Evans enrolled to study law at Sydney University. The Dean of Law at the time, Pitt Cobbett, was fortuitously absent overseas and Ada Evans’ enrolment slipped through unnoticed.

* President, Court of Appeal of NSW. I wish to express my thanks to my Researcher, Alice Zhou, and the Court of Appeal Researcher, Natalie Czapski, for their research and assistance in the preparation of this paper. I would also like to thank the Judicial Commission of NSW for providing me with current and historical statistics of the number of female judicial officers in NSW.

Although she graduated with her cohort, practise was denied to her. The Legal Profession Act 1898 (NSW), which was enacted the same year Ada Evans enrolled to study law, established a board to approve “properly qualified persons” for admission to the bar. The conventional thinking at the time, however, was that a “woman” was not a “person” for the purposes of such legislation. This was despite the fact that the Acts Interpretation Act 1897 (NSW) provided that “[w]ords importing the masculine gender shall include females”.  

Ada Evans, it would seem, was advised that any action to compel the Board to admit her would be unsuccessful. In a newspaper interview shortly after her graduation in 1902, she commented that when she had sought to be admitted, the Chief Justice had “pointed out that women were not admitted in London, and so could not be here”. 

Disappointed, but determined, Ada Evans campaigned tirelessly for the admission of women to the profession in NSW. She did not think “we should slavishly follow London”. She succeeded, but it took some time. When, 16 years after her graduation, the Women’s Legal Status Act was passed, Ada Evans declined to enter the profession. She felt that her long involuntary absence from the law rendered her unable to give her clients the representation they deserved. 

In the meantime, there was significant legislative activity in other Australian States. In 1903, Victoria became the first Australian State to allow women to enter the profession, with the passage of the Women’s Disabilities Removal Act 1903 (Vic). Flos Greig graduated from Melbourne University that year and, two years later, became the first woman in Australia to practise law. Legislation permitting women to practise followed shortly afterwards in Tasmania in 1904 and Queensland in 1905. Western Australia was the last State to pass legislation allowing women to practise when it enacted the Women’s Legal Status Act 1923 (WA), almost two decades after the first attempt had been made by a woman to formally enter the profession. In 1904, Edith Haynes applied to the Western Australian Supreme Court for an order nisi seeking mandamus to compel the Barristers Board to admit her as an articled clerk. The question was one of statutory construction: did “he” in the Legal Practitioners Act 1893 (WA) include “she”? Edith Haynes’ application was refused. 

As wrong as that result was, it was the banter between the bench and the bar that revealed the most about the prevailing attitude of the day. An argument was made that as there was no prohibition against female doctors, nor should there be one against female lawyers. Mr Justice Robert Burnside quipped: “Medical ladies, as a rule, attend only to ladies. Will you have a legal lady attending only to lady clients?” In an equally disgraceful riposte which brought on a great deal of laughter in the male-dominated court room, Edith Haynes’ own lawyer said: “Many lawyers have lady clients whom they would be glad to hand over to lady solicitors,” to which Mr Justice Robert McMillan quipped: “If you had lady lawyers, do you not think that some of the more prepossessing might have an undue advantage?”

After the passage of the NSW legislation, it was another six years before the first admission of women to the profession. In 1924, Marie Byles became the State’s first female solicitor and Sibyl Morrison the first barrister. It was reported that Sibyl Morrison “caused a flutter” in her first appearance at the Water Police Court when, being unrecognised, she informed the court that she was a member of the Bar.

3 ibid.
4 “In Portia’s footsteps: the State’s first lady lawyer. A chat with Miss I. E. Evans”, Evening News, Sydney, 22 April 1902, p 7. In London, in 1915, Gwyneth Bebb sought to test that theory by bringing an action against the Law Society of England and Wales, seeking a declaration that she was a “person” within the meaning of the Solicitor’s Act 1843 (UK). Her suit was unsuccessful: see Bebb v The Law Society [1914] 1 Ch 286.
5 ibid. The UK first admitted female lawyers after the passage of the Sex Disqualification (Removal) Act 1919 (UK).
6 Bell, above n 2, p 26.
7 Legal Practitioners Act 1904 (Tas); Legal Practitioners Act 1905 (Qld).
8 Re Edith Haynes (1904) 6 WALR 209.
9 “Shall women become lawyers? A local application. Reference to the Full Court. Affidavit of Miss E. Haynes. An amusing argument”, Kalgoorlie Western Argus (Western Australia), 23 August 1904, p 44.
10 ibid.
Although women had been granted the right to practise, their acceptance into the profession was painfully slow. Up to half a century later, the prevailing attitude throughout the 1960s and 1970s remained that law was not “a woman’s game”. In 1964, fed up with being told by city firms that it was not their policy to employ women as articled clerks, Mary Gaudron and Daphne Kok as representatives of female law students at Sydney University approached the NSW Women Lawyers Association to express their frustrations. They were told by the then small group of female practitioners that the solution lay in their hands: they should learn to touch type, forego their university studies, take the Admission Board course, and use their holidays to complete the exams.\(^\text{12}\)

Reflecting upon this encounter some years later, Mary Gaudron remarked:

\[\text{I knew, before the meeting, that for a woman to succeed, she had to be better than her male counterpart. I knew, after the meeting, that that was as simple as learning to touch type – hardly an insuperable task. And I knew, too, that the women who offered us that advice were speaking from their own experience: the hurdles they had to jump had been much higher than those we were ever likely to confront.}\(^\text{13}\)

The NSW Women Lawyers Association was officially formed in 1952, although from about 1941, women lawyers had been meeting informally in Sydney, first at the home of solicitor Veronica Pike, and then at the Feminist Club on King Street.\(^\text{14}\) In 1951, at the Commonwealth Legal Convention in Sydney, it was decided that a formal association was needed to represent the interests of women entering the profession.\(^\text{15}\)

However, it was quite some time before women were accepted in the professional representative bodies. In 1951, Margaret Degotardi became the first woman to nominate for election to the Law Society Council (then known as the Incorporated Law Institute), but it was not until 1972 that a woman, Ann Plotke, a successful commercial solicitor, was elected.\(^\text{16}\)

Ann Plotke was followed onto the Law Society Council by Mahla Pearlman, who was later elected the first female President of the Law Society of NSW in 1981. It would take another 18 years before NSW saw another female Law Society President, Margaret Hole, in 1999. Since then, the Law Society of NSW has had five further female Presidents: Kim Cull (2002), June McPhie (2006), Mary Macken (2010), Ros Everett (2014) and Pauline Wright (2016). Ruth McColl, now a judge of the Court of Appeal, became the first female President of the NSW Bar Association in 1999. Anna Katzmann SC, now a judge of the Federal Court, and Jane Needham SC were President of the NSW Bar Association in 2007–2009 and 2014–2015 respectively.

It would be remiss to highlight the achievements of women in the law without mentioning Elizabeth Evatt. In 1955, after being accepted as the youngest ever student to study law at Sydney University, she became the first woman to graduate with the University Medal in Law. She was one of many women who would make their mark academically as women began to study law in greater numbers. Elizabeth Evatt chaired the Royal Commission on Human Relationships from 1974 to 1977, with Jane Mathews as her counsel assisting. In 1976, Elizabeth Evatt was appointed the inaugural Chief Justice of the newly established Family Court of Australia and, in 1988, she was appointed President of the Australian Law Reform Commission. Not only was Elizabeth Evatt the first female President but she stewarded an ambitious law reform program that placed issues affecting women at the forefront of the agenda.\(^\text{17}\)

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\(^\text{13}\) ibid.


\(^\text{15}\) ibid.


Larissa Behrendt is another woman to have made her mark in academia. Now a professor at the University of Technology, Sydney, she was the first Indigenous Australian to graduate from Harvard Law School, where she obtained a Master of Laws and a Senior Doctorate of Jurisprudence.

We have come a long way since 1973, when an article was published in the Sydney Morning Herald which referred to the following remark made by an unidentified “distinguished law lord” in the United Kingdom: “[s]ome day a woman will be appointed to the Bench. By that time, thank God, I will be dead”. That law lord presumably rolled over in his grave earlier this year, when the UK Supreme Court sat with a majority of female judges for the first time in its 600-year history. England’s “former colonies” were much more intrepid. 1999 marked the first time an all-female bench sat in an Australian court and, it is understood, in the common law world, when Justices Virginia Bell, Carolyn Simpson and myself sat in the NSW Court of Criminal Appeal.

As Mary Gaudron intimated, the legal profession of today owes a huge debt to the women “who did it first”. Today, 46% of the NSW Local Court magistrates, 34% of the NSW District Court judges, 25% of the NSW Supreme Court judges and 43% of the High Court judges are female. These courts have had their “firsts”: the first female Chief Justice of the High Court — Chief Justice Susan Kiefel; the first female judge on the NSW Court of Appeal and President of the Court — myself; the first female Chief Judge in Equity — Justice Patricia Bergin; and the first female solicitor appointed to the NSW Supreme Court and as Chief Judge in Equity — Justice Julie Ward. The NSW Local Court has also had its “firsts”, including the first Indigenous Australian magistrate, her Honour Magistrate Patricia “Pat” O’Shane. However, the real and only point is that female judges play an equal role in the administration of justice in this State.

The latest national statistics reveal that, in September 2018, there were 56 female and 100 male Commonwealth judges and across State and Territory Supreme Courts and Courts of Appeal, 42 female and 132 male judges. Although these figures neither reflect the gender composition of Australian society nor the distribution of female and male solicitors in Australia, where women now outnumber men, those who enter the profession should know that they are doing so at a time where individual talents and experiences are the hallmarks of the legal profession, whether that be as a judge, practitioner or academic.

One trusts, therefore, that the comments of Justice Kelly Rees at her swearing in ceremony as a judge of the NSW Supreme Court will have increasingly little relevance. Her Honour referred to the impact of the “simple, inescapable … totally irrelevant fact” of her gender when she was at the Bar and stated:

I look forward to the day when the subject of gender becomes irrelevant in speeches such as this one.

Professor Larissa Behrendt.

The Hon Susan Kiefel AC was the first woman appointed Chief Justice of the High Court.

Patricia O’Shane AM was the first Indigenous magistrate.

The Hon Justice Julie Ward.

20 A Phelan, “Female judges control the Bench in landmark sitting”, Sydney Morning Herald, 16 April 1999, p 5.
23 “Swearing-in ceremony of the Honourable Justice Kelly Anne Rees as a judge of the Supreme Court of New South Wales”, 5 September 2018, at [46].
24 ibid at [48].