

**Inaugural Address, Professional Environmental Women's Association
5 November 2015**

Justice Nicola Pain
Land and Environment Court of NSW

Thank you for the invitation to speak at the inaugural meeting in NSW of the Professional Environmental Women's Association. I understand this organisation was first formed in Melbourne and has a Perth chapter and now it is NSW's turn. As in other states the organisation in NSW is aimed at a broad membership of women working in environmental fields, which includes but is in no way limited to lawyers. That this is the third state chapter to be launched suggests there is a demand for such an organisation.

It does beg the question of why have such an organisation?

Womens Professional Bodies

It is useful to belong to a variety of professional bodies. It is useful to have womens' professional bodies. Women need to help themselves.

Two examples of organisations I belong to provide some useful background.

I am a member of the Australian Women Judges Association which many women Australian judges belong to. It is in turn a member of the International Association of Women Judges. The Australian and international bodies are very active around the world supporting chapters in most regions of the world particularly those in lesser developed countries. Women judges in developing countries can face particular challenges unknown to Australian women judges, such as personal security issues.

The forthcoming biennial conference of the International Association for Women Judges to be held in Washington DC in May 2016 celebrates 25 years of that body. Topics to be addressed by many senior women judges from around the

world include judicial systems and disasters, women and children in detention, and post – post conflict transition from humanitarian emergency to strengthening of the rule of law. Developed country chapters provide scholarships for women judges to attend from poorer jurisdictions. Attendance at such conferences is eye opening for Australian women judges.

On a more local level, the NSW Women Lawyers Association is very active and runs a program with a range of professional topics and speakers. It commenced in around 1952. The provision of networking opportunities is emphasised as part of its programme. The best workplaces for women were recently highlighted in its 2015 “Law Firm Comparison Data” ongoing project. It also represented women lawyers with submissions earlier this year in regard to “Consolidation of Anti-Discrimination Law” and “Review of Australia’s Paid Parental Leave Scheme”. It is affiliated with the Australian Women Lawyers Association which also looks at issues specific to Australian women lawyers.

Women in the Law

In many previously male dominated fields such as engineering women are entering university courses in record high numbers and that observation applies particularly to law degrees. The latest figures show 66% of law graduates are women. Reaching the senior ranks of the profession whether as a solicitor, barrister or judge remains challenging but numbers are slowly improving.

I would like to focus on my profession of law and talk about numbers of women and leadership.

Women on the Bench

When I was appointed as a judge in 2002 the Chief Judge was Mahla Pearlman, a woman of many firsts. First female president of the Law Society elected in 1981, first female president of the Law Council of Australia in 1989, first female Chief Judge of the Land and Environment Court appointed in 1992. Mahla was an inspiring figure as a lawyer and judge, a leader amongst equals to her colleagues

on the bench and had terrific personal qualities. She died in 2011 and is much mourned by many former colleagues, me among them.

I have a colleague Justice Rachel Pepper, another female judge at the Land and Environment Court. Given that there are six judges this constitutes a third of the bench. Amongst the Court's seven full-time commissioners at present six are women. Our statistics look good.

The High Court of Australia stands out for having in recent times three female judges out of seven with the appointment of Justice Virginia Bell in 2009, joining Justices Susan Kiefel and Susan Crennan. Justice Crennan has since retired. With the appointment of Justice Michelle Gordon in June this year three of the seven judges continue to be women. This situation is in marked contrast to the experience of Justice Mary Gaudron former Solicitor-General of NSW the first woman appointed to the Court in 1987. Justice Gaudron remained the sole woman until her retirement in 2003.

The Australian Women Lawyers Association undertakes regular surveys including in July 2013 a study of gender in the Australian judiciary comparing numbers of women judges in 2013 with 1995. In 2013 33.53% of judges in Australia were female. That is 340 judges were female out of 1014 judges in total. By way of comparison, the number of judges in all jurisdictions in 1995 was 810 with women occupying 71 positions, accounting for 8.77%. Victoria, the Northern Territory and the ACT were considered to be leading the way. This shows a large improvement albeit over 18 years.

In NSW, 2013 saw the appointment of Justice Margaret Beazley as the first female president of the NSW Court of Appeal. Justice Julie Ward was appointed the first female solicitor to the NSW Supreme Court in 2008 and was elevated to the Court of Appeal in 2012, joining Justice Ruth McColl and Justice Beazley. Justice Caroline Simpson joined them in 2015. Four of the 12 Court of Appeal judges in NSW are now women, a record high.

Women Practicing as Solicitors

There has been much discussion and proactive work by the Law Society of NSW to understand how women are being treated in the legal profession in NSW. Several studies which provide statistics on the number of women judges, solicitors and barristers in NSW have been produced. The statement is generally made that while women are now often a majority of law students they are not entering the upper echelons of the profession at a level commensurate with the numbers graduating and taking up practice. The position is improving slowly although probably more slowly than had been hoped or expected.

A 2011 study by the Law Society of NSW *Thought Leadership 2011 Advancement of Women in the Profession* identifies that the number of female solicitors has increased substantially. The study showed:

- There has been a substantial increase in women solicitors in all sectors (private, corporate and government) between 1988 to 2010 from 20.2% in 1988 to 45.9% in 2010
- 41% of lawyers in private practice were female in 2010
- The proportion of women as principals in private practice in firms with 21 or more partners has risen from 18% in 2005 to 23% in 2010

The 2011 study was updated in the *Advancement of Women in the Profession Progress Report* released by the Law Society of NSW in August 2013. The updated study showed:

- Overall increase in women solicitors in private practice from 34% in 2003 to 41% in 2012
- Women as principals in private practice has risen from 17% in 2003 to 23% in 2012

- The appointment of women as new private practice principals has risen to 41% about equal to the percentage of women in private practice overall
- The number of managing partners of large law firms who were female has increased by 100% from one to two

In relation to corporate practice the study showed:

- In-house counsel - 56% of NSW corporate lawyers are women 44% male
- Most senior lawyer - 46% female 54% male
- Head of legal team - 48% female 52% male

In relation to government practice the study showed:

- 63% of NSW government lawyers in 2012 are women 37% male
- Most senior lawyer - 40% female 60% male
- Head of legal team - 52% female 48% male

The 2013 study stated that the trends from 2011 were continuing but that challenges remain for women in progressing their careers particularly in relation to flexibility when children arrive and career progression afterwards. Speakers at the launch of that report highlighted that working as in-house counsel and in government practice is often more favourable to women than highly competitive private practice because of a greater willingness to allow flexible work practices.

Women at the Bar

Dame Roma Mitchell was appointed Australia's first female silk in 1962 in Adelaide. Her experience at the time was unique and continued to be ground breaking for many decades.

The Law Society of NSW 2011 study also looked at numbers of women at the bar in NSW in 2005 and 2010 and it is sobering to consider. In 2005 female junior barristers were 16.7% of the total number of practicing barristers. This figure rose to 21% in 2010. In 2005 female senior counsel were 4% of the total of silks which percentage rose to 6.5% in 2010.

A survey released in September this year by the NSW Bar Association also identified that 21% of barristers at the NSW bar are female, where there are 2267 barristers. Ten percent of senior counsel are women. One of the issues highlighted in the report was the large disparity in earnings between male and female barristers.

A revised equitable briefing policy has been proposed by the NSW Bar Association that by 1 July 2017 firms and agencies with at least 25 lawyers and all government agencies should give 10% of briefs to female silks to try to ensure well-paying and quality briefs are sent to women barristers. The current president of the NSW Bar Association Jane Needham SC said that the study made clear that women are not being given the same opportunities as men. Challenges for women continue at the NSW bar.

Advancement is happening for women in the legal profession but at different rates in different parts of the profession.

Leadership

I wanted to include the numbers of women in the law generally and at senior levels before turning briefly to leadership which is a fundamental part of recognition of women in senior levels.

In terms of leadership in the legal profession NSW solicitors are represented by the Law Society of NSW. This commenced informally in 1842, became the Incorporated Institute in Law in 1884 and the Law Society of NSW in 1960. Of the sixteen Presidents since 2000 three have been women. Mahla Pearlman was a trail blazer with her appointment in 1981.

The NSW Bar Association is the barristers' representative body whose executive council is elected by its barrister members. It commenced in 1936. The members of the executive often go on to be appointed as judges. There have been only three female presidents of the NSW Bar Association. Ruth McColl now Justice McColl in the NSW Court of Appeal and Anna Katzmann now Justice Katzmann on the Federal Court of Australia. Jane Needham SC is the current President of the Bar Council.

These figures could and should be much better for women.

Thinking about leadership and what I have experienced in my varied career as a solicitor in private practice, running a community legal centre the Environmental Defenders Office, and in legal practices at the State and Federal government levels and now as a judge I think of leadership in several ways, which I will refer to briefly and somewhat simplistically. Organisational leadership where a person must foster a team and encourage those in it to work together to achieve a common goal is something I learnt on the job at the Environmental Defenders Office. The office grew over several years to include a number of people fulfilling legal, educational and policy roles. Managing in the community sector where everyone has a common goal to build an organization which they believe has a good common purpose is easy on the whole in that motivating people is not an issue. A good leader values the people in their team and lets them know it. If you have good quality people with a common goal, leading is easy.

I have also been exposed to people who are thought leaders in that they are innovative thinkers whether on legal or other topics. Thinking outside the box is another way of expressing what I mean. In the community and government sectors it is important to encourage those around you to think creatively and stretch themselves.

As a judge clarity of reasoning and legal analysis is key. Intellectual leadership is involved in the sense that I am often deciding matters which have not been decided before. Leadership goes with the job.

I would say inspiring leaders are engaged in what they do and show it. Women leaders can deliver in all these areas in spades and increasingly do so, as recognised by their increasing representation at senior professional levels.

Conclusion

Environmental issues lend themselves to cross-disciplinary engagement of different professions and that is one of the major attractions of these areas. Many of the fields of environmental science and engineering, and areas of the legal profession, are traditionally male dominated and it is beneficial for women who work in these areas to meet and discuss issues relevant to them. Developing networking and professional skills through such professional associations all contributes to the development of womens' careers and ultimately their leadership potential within their chosen career. This new association will contribute to that goal in NSW and is likely to prove popular. I wish the NSW chapter of the Professional Environmental Women's Association all the best in its future endeavours.