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Chief Commissioner Christine Nixon APM

Photo courtesy of Victoria Police

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&
Policing
Globally



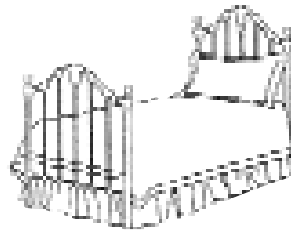
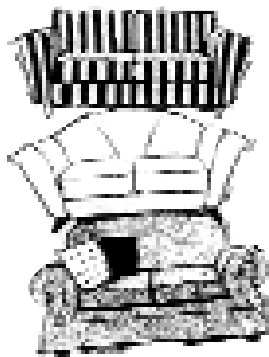


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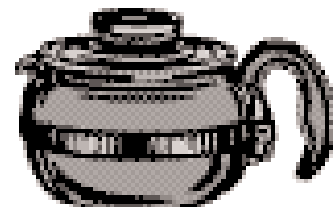


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Welcome to the final *Journal for Women and Policing* for 2001!

You will probably have heard by now about the most exciting thing to happen in policing in Australia: the appointment of – not just the first female commissioner of police – but a commissioner with a serious commitment to changing the status quo for women both within policing and in the broader community. Of course the Council is delighted with the appointment of Christine Nixon to Chief Commissioner in Victoria and her acceptance speech is published in full in this edition. As you will see, it is clearly not the speech of a bloke!

Critical to the sustained performance of any CEO is the support provided by those around them – in Christine's case, her husband John. Those in Victoria would be well aware of the blaze of media that heralded Christine's appointment and caught some of the unsuspecting, (like John!) in the headlights... We asked John for his thoughts on the support role he provides to Christine and we think his perspective will entertain you!

Other recent events include the *Australian Women Speak* conference hosted by the Office of the Status of Women in Canberra in August. We have published two of the papers from this conference. The first, on *Transforming the Gender Divide*, by Fiona Krautil looks at activating EEO in the workplace; a critical issue for many police organisations. The second, by the Hon. Justice Roslyn Atkinson looks at women and justice and asks: *Is there justice for women?*

Chris Lidgard also profiles the most senior woman in Queensland Police Service, Assistant Commissioner Kathy Rynders. We hope Kathy's career success will provide a few pointers to those aspiring to higher ranks in policing.

Melinda Tynan and Helen McDermott
Editors

Chief Commissioner Christine Nixon APM Parliament House, Melbourne on 23 April 2001



The Hon Steve Bracks, MP, Premier of Victoria, the Hon Mr Justice John Phillips, Chief Justice of the Supreme Court of Victoria, Acting Chief Commissioner, Mr Neil O'Loughlin, APM, members of Victoria Police, distinguished guests, ladies and gentlemen.

This is a very proud moment for me. To be here, with my husband, my father, mother, brothers, their partners, my nieces, friends and colleagues. As well as a distinguished range of community representatives.

I have taken up a new position; I am now the Chief Commissioner of Police for Victoria. The leader of the People's Police. It's an honour. It's also a challenge.

Everyone, though, all the people of this state, the Parliament, the government, and all the men and women of the Victoria Police should know and understand that on entering this new position, I will not be abandoning or compromising the other positions and statuses that I occupy. On the contrary, in my new role as Chief Commissioner of Police I will act to sustain and nourish the values associated with my other continuing roles. You shall know me by what I am and what I do. I am, we are all products of those roles and influences in our lives.

What are those roles and influences?

Well, first, I am a woman. Much has been and will continue to be made of the fact that I am the first woman Chief Commissioner. I can tell you, there are not too many women commissioners – globally. That makes the fuss not too surprising. But when we consider that women have been serving police officers since the turn of the century and since 1916 in Victoria, when we reflect that there are over 5000 female officers in Australia, and when you add to that the fact that every Australian police agency subscribes to open-to-all merit-based promotion policies and anti-discrimination legislation, then, gee, we shouldn't be overly astonished at what has happened here today!

The female gender has brought its fair share of brains and imagination to policing, and femininity has, I hope, helped to nourish the caring and compassionate values and ideals that have always been embedded in the core of good policing. Wanting to make a difference, being

there to help, has been a characteristic of good (masculine) policing since its formation in 1829. I want those caring values associated with femininity to continue to be promoted within this police force. But please – don't get me wrong. Don't misconstrue caring for others, wanting to help the disadvantaged, the needy, the distressed, the victim, with being soft or weak on any account. Especially, don't confuse it with being soft or weak towards those who cause disadvantage, to those who exploit the needy, or to those whose misbehaviour causes distress to others. Don't think that the feminine virtues mean being indifferent to those who cheat, steal from and commit violence on others. That kind of softness has never been associated with femininity – ask any mother!

My motivation to become a police officer stemmed from my deep conviction for the need for a tough and uncompromising response to those whose behaviour threatens our well being, our freedom, our peace of mind, and our property.

But that response should not only be tough and uncompromising; it should be as effective as we can make it. And, it should never ever be unlawful. It should never ever ride rough shod over people's rights.

Another status I enjoy is that of a citizen of Australia. I would never be a police officer in a totalitarian state. In a free and democratic state, policing is properly subject to the political will. The very idea of a police force immune from political direction and control is not feasible or even desirable! Quite properly, my appointment today took place in this place, the Parliament. The supreme authority of this state – the governor in council, confirmed my appointment. The Chief Magistrate of this state administered the oath I took. All this is part of the proper democratic machinery of the state of Victoria. As a police officer, I am subject to the state and to the political powers that give it life.

But of course, that political power, and the direction and control it wields is constitutionally limited. It is governed by the rule of law – the overarching principle that requires everyone, no matter who they are, to be subject to the law, never to be above it. It is protected

from abuse by powerful conventions that allow only political direction through properly constituted, transparently created law and policy. It does not allow for any particular case to be policed for partisan political interests – whether of the government of the day or of any other interest group.

Policing is a scarce not an infinite resource; there are many uses to which it can be properly put, policies and priorities properly developed can shape the strategic direction to which those scarce resources can be put and best used.

Third, I am a spouse —. I am married to a very fine bloke whose name is John Becquet. I am not and will not be married to the job. That doesn't mean that I won't put in all the hours and effort required — but I hope it will be quality leadership, and sensible decision-making you will get from me. I will try for a balanced and healthy lifestyle, as we all should.

I will not operate on the quite silly idea that somehow nothing gets done or policed properly if the Commissioner isn't personally there to see to it! I know that on a day to day basis the quality of policing depends more on the quality and professionalism of the men and women out there doing the job, than on who happens to be the Commissioner. In the long term, of course, who is in strategic charge of an organisation, is important.

Don't worry! I'll always be there if I am needed — which makes me no different from other any other good police officer or public servant.

Retired Commissioner Mick Miller wrote to me on my nomination. He wished to remind me that "I only had temporary custody of the Victoria Police Force and that only history would judge my efforts". And he is right. He also referred to an article, he had written some 20 years ago about the role of women police, at the end of which he suggested that in the year 2000 a female commissioner might like to address a range of issues he raised. Former Chief Commissioner Miller is obviously a prescient man.

Fourth, I may now be Chief Commissioner but I am still a police officer. I will continue to occupy an office I have enjoyed for 28 years and 5 months, that of the ancient and honourable office of a constable of police.

In a quite fundamental sense I see myself as first among equals. A leader of my professional colleagues. My calling, my vocation is policing. I regard myself as a member of a fast developing highly responsible profession. Most of my life has been devoted to the core values of the public institution of policing. I know the civil police to be a very special institution — indeed, the defining institution of a truly civil, liberty-loving society. In the kind of society that is Victoria, the people gave up their general right to seek immediate and forceful redress to wrongs done them by others and placed that right in the hands of the state.



Policing is the legitimate capacity of the state to use force if necessary to help stop things getting worse and help start things getting better. As one police scholar put it: "when something-is-happening-that-ought-not-to-be-happening-and-something-ought-to-be-done-about-it-now-call-the-police!" No other organisation in our society is ready, every minute of every hour of every day, year in and year out, to respond to the needs of the people in such a way. I find the fact that in Victoria anyone can for free, directly and immediately, call up the power of the state — truly marvellous. In some places the last people you would call for help would be the police!

Here we are the people's police. We are here to serve. We serve our communities, we serve our citizens, we serve our residents, we serve our children. Through my officers I want it wonderfully and clearly demonstrated that we—them and me—are the servants of the people. The laws we enforce, and how we enforce them are the people's laws. The peace we keep isn't just the peace of the few, or the rich, or the famous, or the powerful — we keep the people's peace — all the people's peace.

These, then, woman, spouse, citizen and constable, are the primary roles that make me the person I am.

I have strong values and standards instilled in me by my parents Betty and Ross Nixon and developed through the support of many others. These values and standards underpin all that I do and want to accomplish. I would want similar standards and principles to underpinning the practices and behaviour of the members of the Victoria Police.

I strongly believe in the principle of fair process, which builds trust and commitment in people. Trust and commitment produces voluntary cooperation.

Voluntary cooperation drives performance. It leads people to go the extra yard, beyond the call of duty; it encourages them to share their knowledge. It encourages them to be creative, to innovate, improve, do better.

I took on this challenge because I know the potential of this police force. I know that the Victoria Police has a huge well of energy, creativity and good will waiting to be drawn upon. My job will be to harness and encourage the full flourishing of that boundless resource.

As Chief Commissioner I will focus on maintaining the status of the Victoria Police as a premier policing agency.

I will use all the best means available to me to ensure the efficiency of our organisation, including the use of project management, business planning, along with strong and transparent personal accountability systems

I will focus on those priority areas of key concern to our citizens: crime control, safer homes and public places, and the reduction of violence.

Where appropriate, I will promote national issues, and explore how inter-state and Commonwealth cooperation can develop synergies of systems and procedures.

I will concentrate in the next three months consulting, listening and talking with people: with community groups; with street police; with my senior managers, and with the government, with all who want to contribute, in order to develop a consensus on the future strategic direction for the Victoria Police.

I have come to this position along a path many said was impossible. I want to tell you that more things are possible than we might think. What is required is faith and optimism in people. If you act on that, and don't settle for anything less, you won't end up compromising the greatness that could have been.

All of us, I believe, stand at a significant point in history. I personally, and I hope all the people of the Victoria Police with me, will seize the opportunity now before us to be the very best we can be.

Thank you for sharing with me in this ceremony, and for allowing me the opportunity to publicly acknowledge my utter and complete commitment to serve the Victorian community, the Victorian State and Government, and, the men and women of the Victoria Police.

<p>1972 Joined NSW Police – Safety Advisory Section</p> <p>1975 Transferred to Women Police CIB</p> <p>1976 Darlinghurst Police Station – one of three women “on trial”</p> <p>1977 Personnel Administration Certificate</p> <p>1978 Transferred as research officer in Police Training Development and Examination Branch</p> <p>1980 Postgrad. Diploma in Labour Relations and the Law</p> <p>1983 BA</p> <p>1984-5 Harkness Fellowship</p> <p>1986 Police Adviser Policy and Planning Branch</p> <p>1991 Chief Inspector Quality Control Officer Distance Learning and Field Training</p> <p>1992 Superintendent Special Skills Programme NSW Academy</p> <p>1994 Assistant Commissioner, Executive Director Human Resources</p> <p>1998 Assistant Commissioner Greater Hume Region and North Metropolitan Region</p> <p>1999 Assistant Commissioner South Eastern Region</p>	<p>I joined as a 19 year old, straight out of school. I wanted a job that gave me the opportunity to help. I started in the School Lecturing Section which at the time was one of the two areas of work available to women. I actually liked the experience – we spoke to all ranges of people about safety issues. Eventually I grew tired of 8-10 lectures a day and traffic duty.</p> <p>I figured that women should be allowed the opportunity to try a range of careers in policing. For a short time I moved in to the Women Police Office of the CIB. Through lobbying and with the reluctant assistance of the Police Association, two other women and I were allowed to commence General Duties on a trial basis at Darlinghurst Police Station. This experience started with the switchboard but ended up out in the field doing all types of operational work.</p> <p>In 1978 I applied to become a Detective and undergo training in the same way as the men but was told “No”. I moved from Darlinghurst to work for Inspector John Avery in the newly formed Training Development and Examinations Branch. We were involved in a range of educational, policy and legislative reforms covering sexual assault, DV, child abuse, summary offences etc. This was a great experience.</p> <p>In 1984 John Avery became Commissioner and I went to Harvard University for two years. I returned to the position of Policy Adviser and worked with a number of others on development of the Community Based Policing reform strategy.</p> <p>In 1989 I applied for the job of Chief Inspector Senior Police Adviser and was nominated for the position, but never appointed. Eventually I applied for another position in Education. I won that position and then went on to become a Superintendent and eventually Assistant Commissioner, a rank I have now held for six years.</p> <p>I moved into operational policing in 1998 and enjoy working with the field police immensely.</p>
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Sharing The Load – The experiences of a supportive (male) partner

By John Becquet
Melbourne

I am one of an endangered species, the (male) partner of a senior (female) police officer. I can judge how rare is my status from some of the experiences I have had over the years. Some I can share with you, others are best forgotten.

For example, early in my career as accompanist to the great lady I was invited to a dinner for the highest ranking police officers in the NSW Police Service. As I recall there were about twenty officers plus nineteen female partners and yours truly. The host officer arose from the dinner table and gave a moving address lauding the qualities of "our wives". Eager to be an assertive spouse, I waved at him and pointed at myself. Ignoring me he plowed on, eventually I asserted myself by rudely interrupting him and speculating that I would have to become a cross dresser in order to receive any recognition. On other less social occasions I have answered the telephone in the middle of the night to be told by, usually, a male police officer that "we have a hostage situation". Before they can tell me all about it I cure their gender confusion by handing the phone to my partner. I am pretty sure that female partners are not invited to participate in the policing process.

There is a much used saying that behind every powerful man is a very competent woman. Competence being defined as the ability to feed, clothe and massage the ego of the great man, to be an almost unseen life support system. I wish I could say that the reverse was true, but speaking from personal experience, we males have a long way to go.

My wife's friends constantly shower praise on me for being such a great support, I bask in this praise, but of course, they haven't seen the bathroom I just

cleaned. I can enter any bathroom armed with varieties of toxic chemicals and emerge hours later with the bathroom looking messier than when I started.

When we were first married we both had very busy careers which, in my case, involved lots of travel. We agreed that we would share the domestic tasks as any modern couple should. So for the next five years that is what we did. Upon reflection this equal sharing consisted of me spending twenty minutes per day pleasurably shopping for food, and thirty minutes per day cooking said food (using five pots to be washed by guess who?). My partner handled all the other minor tasks like washing the clothes, mowing the lawn and painting the house.

Six years ago I changed careers and set up a consultancy business which involved working from home. Now I could really blossom. I would work a set number of hours in my office and then I would become house person extraordinaire. My partner gave me one of her sceptical looks and suggested that we should hire a cleaner. Deeply offended I scoffed at this ridiculous idea and subjected my long suffering wife to the dubious delights of my domestic routines. When she occasionally complained over some trivial issue like decomposing food in the fridge or mud in the bathroom I would retort that she could at least spend most of her day in a nice clean office.

The next development in my new found career of support person was triggered when my wife took up the role of Region Commander in a region with a large rural policing component. I must have been subconsciously suffering from "male/female power imbalance syndrome". After thirty years working in

an air-conditioned office, wielding no tool larger than a pen, I took up the macho outdoor life. I now traversed the countryside in a four wheel drive equipped with chainsaw, axes and other tools, some of which I could actually use. The paddocks echoed with gunfire as I pursued rabbits and other vermin. I even built a canoe. My masculinity remained intact, the gender balance restored!.

This phase of male menopausal activity lasted for two years until my wife once again seriously tilted the gender balance by becoming Chief Commissioner of the Victoria Police. She then really rubbed it in by taking me to a conference attended by 900 women police officers and approximately ten male hangers on. The highpoint? of the conference was an entertaining evening with five feminist comedians who proceeded to cruelly dissect any notions of male superiority or even competency. I guess the experience was cathartic in some way because I have come to realise that it is all in the mind.

On a more serious note I know that the issue of who supports who is not a trivial one. I have had the good fortune to be of mature age and not being in a situation where time, money and other resources became major issues. I know that, particularly in the

policing world, there are many difficulties in combining careers with family. We all know many instances of one partner or the other having to make sacrifices to further their partner's career. All too often, we also know that very often it is the woman who makes the most sacrifices.

I believe the situation would be improved by following a few vital rules. They are:

- Communicate, communicate, communicate. Talk about issues that concern you, trivial irritations can turn to major resentment
- Sit down and agree on both your career strategies, make a list of positives and negatives to cover every scenario. If necessary seek advice from someone you trust.
- Don't use emotional blackmail to pressure your partner into agreement. Such agreements are usually not worth the paper they are not written on.
- Two individuals blindly following their own selfish ambitions do not a partnership make. Teamwork wins hands down every time.

Finally, the next person who calls me Denis Thatcher will get thumped.



2002 Women and Policing Globally Conference

National Convention Centre, Canberra
20-24 October 2002



International women police representatives will converge in Canberra in October 2002 for the first international women police conference to be held in Australia.

Police from around the world will be meeting in Canberra next year to take part in the **2002 Women and Policing Globally Conference**. Hosted by the Australasian Council for Women and Policing in conjunction with the Australian Federal Police and the International Association of Women Police, the conference will focus on issues for women and policing globally. It will bring together practitioners and experts from criminal justice, policing and law enforcement, as well as researchers and academics. Issues to be examined at this conference include:

- International trends for women and policing;
- Global issues for women and justice;
- Defending women's human rights;
- Gender and policing;
- International networks for immigration, customs and quarantine services;
- Women in the criminal justice system; and
- Improving the status of women in policing

This is the third conference in the Australasian Women and Policing conference series. These conferences are ground-breaking events that have progressed the debate around how policing can be improved for women. The first conference, held in Sydney in 1996, resulted in substantial improvements in the status of women in policing in Australasia, including the establishment of the Women Officials in Police Unions, the Women's Advisory Group to the Commissioners and the Australasian Council for Women and Policing (ACWAP).

ACWAP is a non-government organisation that works to improve policing in Australia and New Zealand by examining ways policing can be better delivered to women in the community and improving policing for the women who work within police agencies.

The second conference, held in Brisbane in 1999, developed a range of recommendations focused on improving how policing is delivered to women in the community. This third conference will build on the work of both these conferences and consider how policing can be improved for women globally by bringing together a range of international organisations and experts.

To obtain a registration form or to register your interest in the conference, contact Conference Coordinators on (02)62929000 or email: conference@netinfo.com.au

Call for papers

2002 Women and Policing Globally Conference
Canberra Convention Centre, Australia
20-25 October 2002



The Australasian Council for Women and Policing, in association with the International Association for Women Police and the Australian Federal Police invite you to submit a paper to the:

2002 Women and Policing Globally Conference **Canberra Convention Centre, Australia** **20-24 October 2002**

You are invited to submit and present a paper to the third conference in the Australasian Women and Policing series.

This conference will focus on women and policing globally and will bring together practitioners, researchers and other experts from criminal justice, policing and law enforcement, and academia. Issues that are being considered at the conference will be, but are not limited to:

- Improving the status of women in policing;
- International trends for women and policing;
- Global issues for women and justice;
- Defending women's human rights;
- Gender and policing;
- Best practice in policing violence against women;
- International networks for immigration, customs and quarantine services; and
- Women in the criminal justice system.

If you are interested in submitting and presenting a paper:

Please forward an abstract of no more than 100 words to:

The Academic Committee
2002 Women and Policing Globally Conference
PO Box 755 Dickson ACT 2602

or email to helenmcd@ozemail.com.au
before 30 November 2001.

To discuss your proposal for a paper or other inquiries, contact Melinda Tynan on (02)62783069 at: tynan_melinda@hotmail.com or Helen McDermott on (02)62715113 or email: helenmcd@ozemail.com.au

PROFESSIONAL DISTANCE – DEFINING IT, MAINTAINING IT, MANAGING IT

By Dr Anna Corbo-Crehan
Charles Sturt University

Anna Corbo-Crehan is a Lecturer in Ethics at the NSW Police College, Goulburn and a Research Fellow in the Centre for Applied Philosophy and Public Ethics, Canberra. She is a philosopher by trade and most of her academic work has been in relation to indigenous people's issues and police ethics. Her PhD thesis was on Contemporary Justice and Australian Aborigines' claims to land.

This article will look at two main issues: the nature and importance of maintaining professional distance in certain relationships; and the obligations and burdens that can fairly be placed on professionals in relation to professional distance. The article refers to professionals generally, and – thereby – to police. This will serve to demonstrate that the burdens and obligations that considerations of professional distance can fairly impose apply to all who wish to see themselves, and be seen by others, as professionals. Put the other way around, those burdens and obligations are not simply just one more accountability mechanism to which police alone should be subjected.

What is Professional Distance?

Professional distance is the 'distance' that ought to be kept between two people between whom there exists either a power relationship or a conflict of interest because of the professional position occupied by one of those people. Such distance ought to be kept so that both parties to the relationship (particularly the 'stronger' party) can not only act fairly but also be seen to act fairly.

More specifically, *professional distance* refers to that metaphorical space outside which a person can act, and be seen to act, in a way that is impartial and/or non-exploitative. A conflict of interest affects a person's ability both to act impartially and to be seen to act impartially;

therefore, a professional distance needs to be maintained to counter both of these. A power relationship makes one person vulnerable to the actions of the other, or – at least – makes that person appear to be vulnerable to the actions of the other, and so professional distance needs to be maintained to eliminate this actual and perceived vulnerability.

What exactly are breaches of Professional Distance?

An action or failure to act that does or appears to lack impartiality and/or that does or appears to involve the exploitation of a power relationship. Breaches of professional distance involve a lessening of that metaphorical space outside which a person occupying a professional role can act in that role, and be seen to act in that role, in a way that is impartial and/or non-exploitative.

What sorts of relationships raise questions of Professional Distance?

The sorts of relationships that raise questions of professional distance are any in which the professional position occupied by one person does or could produce a conflict of interest, and/or does or could make the other person vulnerable to certain sorts of behaviour or consequences.

The relationships may be fraternal, sexual or familial – direct or indirect. For example, they include not just the professional's own friends (direct), but the friends of family members (indirect); not just the professional's immediate family (direct), but also in-laws of family members (indirect).

These relationships fall into two broad categories:

I. Those that we do not have a choice about forming;

Professional distance is the 'distance' that ought to be kept between two people between whom there exists either a power relationship or a conflict of interest because of the professional position occupied by one of those people.

Falling in love with someone is not simply a matter of choosing to be in love with them, of willing it to be the case that you are in love with them; being friends with someone is not simply a matter of choosing to be friends with them, of willing it to be the case that you are friends with them.

Before we derive principles about what a person should do, we need to ascertain what, in fact, that person can do.

II. Those that we do have a choice about forming.

Category I clearly takes in family, including family 'acquired' by one's own marriage and the marriage of others in one's family. In addition, it includes relationships that we have *because of* a primary relationship of a member of our family, eg. relationships with the friends of our children. Generally speaking, these relationships are also ones over which we exercise no choice (except, perhaps, in the case of younger children).

I think though that Category I is more extensive than this. We might choose, for instance, not to associate with members of outlaw motorcycle gangs (which implies a choice not to engage in fraternal or sexual relationships with members of such gangs). But having chosen which 'groups' or 'types' of people we will associate with, it does not seem to be a straightforward matter of choice which *individuals* we form relationships with within a particular group or type. To put the point more starkly: falling in love with someone is not simply a matter of choosing to be in love with them, of willing it to be the case that you are in love with them; being friends with someone is not simply a matter of choosing to be friends with them, of willing it to be the case that you are friends with them.

So, there is a sense in which we do not *fully* have a choice in deciding who we will form relationships with; we certainly have a choice at the level of generalities, but not at the level of specific individuals.

This has important ethical implications in terms of the later question I will consider about whether some relationships should arise at all. If a number of relationships are beyond the will or influence of the professional, then it would be unjust to make it obligatory for the professional to avoid those relationships. Morally, if a thing cannot be done, it is wrong to say that it should be done. Morally, that is, the question of 'should' is subsequent to, not prior to, the question of 'can'. Before we derive principles about what a person *should* do, we need to ascertain what, in fact, that person *can* do. (For example, if it has been established that 2km cannot be run inside 10 seconds, then it would be wrong to say that someone *should* complete a 2km run inside 10 seconds.) Of course, 'can' here is meant in terms of 'is empirically possible'; we are not talking about circumstances where a person cannot swim 50m

because of their poor fitness levels, in circumstances where being able to swim 50m is critical to professional suitability.

Category II raises a different set of ethical issues. If we have a choice about forming certain relationships, then it is at least logically possible to count some of those relationships as right and some as wrong. If some relationships are within or 'capable of being subjected to' the will or influence of the professional, then it would not be unjust to make it obligatory for the professional to avoid some of those relationships. This is providing, of course, that reasonable justifications can be given for burdening the professional with those obligations (eg. one such justification might be that the perception of a conflict of interest would be so damaging that the professional would have difficulty practising in their chosen field).

This category includes relationships on a general level, ie. in terms of the sorts of groups or 'types' of people we associate with. It also includes fraternal or sexual relationships that we are currently in. Although we cannot will it to be the case that we *are* in a fraternal or sexual relationship with someone, we can will it to be the case that we are *not* in such a relationship, ie. we can choose to take steps to end the relationship. Indeed, this is even the case when we 'don't really' want to end the relationship but think we should despite our feelings. What this means, then, is that it would not *prima facie* be unjust to make it obligatory for a professional to discontinue certain fraternal or sexual relationships. Again, this is providing that reasonable justifications can be given for burdening the professional with those obligations.

Should certain relationships arise/continue?

The issue here is whether professionals should take steps to prevent certain relationships arising in the first place or to discontinue certain relationships that already exist. Clearly, this question can only apply to Category II relationships, those that we have some control over in terms of their formation or continuing. The question can be understood in two ways:

- (i) Should a professional involve themselves in, or continue with, particular relationships?
- (ii) Should an employer or professional organisation make rules which would prevent

particular relationships from either arising or continuing?

These two formulations of the question require very different responses, so I will deal with them separately.

Re (i):

Clearly, a professional should be aware of the ways in which certain relationships, or perceptions about those relationships, could affect their ability to properly carry out their professional role. As a member of a profession a person has an obligation to carry out that role to the best of their ability and, therefore, to refrain from anything that would interfere with them doing their best in that role.

To use police officers as an example, their oath of office constitutes what it is that police officers solemnly promise to do in terms of their professional role. Police officers should not do anything that would compromise or undermine their ability to do what they solemnly promised to do when they took their oath. Clearly, some relationships may actually or apparently compromise their promise to act 'without fear or favour'.

So, where they have a choice, should professionals discontinue or not form in the first place relationships that might compromise them or appear to compromise them? The following reasons, at least, justify a 'yes' answer to this question *prima facie*:

- (a) where a relationship causes an actual or perceived conflict of interest, it will be difficult for the professional to be seen to act impartially, even if they do act impartially;
- (b) indeed, even acting impartially may be difficult for them to manage – balancing the competing interests may not be at all easy (and it may be difficult to reason objectively about the 'correct balance' anyway);
- (c) where there is a power relationship, it may be difficult to avoid exploiting that relationship;
- (d) in any case, it will be difficult for the professional to avoid being seen to have exploited that relationship;
- (e) all of these difficulties may call the professional's integrity into question, undermining their credibility with colleagues, clients and others;

- (f) the profession itself may also suffer certain consequences as a result of this diminished credibility;
- (g) these difficulties may impact on the other party to the relationship, who may be vulnerable in particular ways (eg. students may have their own credibility questioned if their relationship with an instructor is seen to involve a conflict of interest).

While all of (a)–(g) are compelling to some extent, there is a difficulty in accepting them too readily. The difficulty is that – logically at least – these seven reasons are not insurmountable. We cannot make an *a priori* judgement that these things *will* prevail. Put the other way around, we can imagine circumstances in which each of the above fails to materialise or materialises but is neutralised, eg. a situation where a professional does manage to make a clear demarcation between their professional and personal obligations and is never perceived to act either partially or exploitatively in terms of those obligations. And this undercuts, or at least weakens, an argument proposing that – *because of the reasons given in (a)–(g)* – professionals should be required to discontinue or avoid certain relationships. If we can not be sure that (a)–(g) will happen or eventuate, how exactly can we use (a)–(g) as reasons for imposing on the relationships a professional has or might enter into? The argument for such pre-emptive measures would need to be carefully made out (eg. in terms of the level of professional risk involved) if its rationale was to be assented to and accepted by the professional.

Re (ii):

Indeed, I think the points just made also work against a firm conclusion that employers or professional organisations should make rules to the effect that certain relationships should not be commenced or allowed to continue. Rules are considerably more sturdy if they can be backed up by a clear moral principle to which the professional (in this case) can assent because they agree with the significance of that principle in the relevant circumstances. In any case, besides the points just made the following more pragmatic objections would need to be addressed before any such rules could be considered properly justified:

- Any such rule would be difficult to monitor and enforce. For a rule to be effective, breaches of it need to be identifiable and

Police officers should not do anything that would compromise or undermine their ability to do what they solemnly promised to do when they took their oath.

I think the points just made also work against a firm conclusion that employers or professional organisations should make rules to the effect that certain relationships should not be commenced or allowed to continue.

If people cannot understand the rationale for a rule, they are not likely to respect it. Indeed, they might resent it and work to undermine it.

If a person genuinely did not know that they were in breach of the rule, it would be unjust to penalise them for that breach; on the other hand, not doing 'something' about unintentional breaches may undermine the rule in the eyes of others.

remedies for, or responses to, those breaches prescribed and enforced. Without this, the rule itself cannot engender any respect amongst those to whom it applies. It will be thought of as a joke, or as an attempt to 'whitewash' an issue by appearing to do something about it, while in fact doing very little or nothing at all.

- The reasons behind the rule (those which justify the rule's existence) may genuinely be difficult for those subject to the rules to understand. For example, a professional may not understand that a person may not be acting freely when they 'consent' to a relationship (eg. in a policing context, a victim of crime or a student taught by a police officer may apparently 'consent' to a relationship only because they feel unfree to do otherwise).
- Related to the foregoing reason, if people cannot understand the rationale for a rule, they are not likely to respect it. Indeed, they might resent it and work to undermine it, thus causing the harm or difficulties which the rule aims to prevent.
- The relevant sorts of rules would be difficult for professionals to comply with, in at least some cases. For instance, a person may not realise that some of the characteristics of a relationship have changed, eg. that a friend is now regularly engaging in fraud or that one of their students is their ex-husband's new lover. If a person genuinely did not know that they were in breach of the rule, it would be unjust to penalise them for that breach; on the other hand, not doing 'something' about unintentional breaches may undermine the rule in the eyes of others.
- (I make this argument cautiously as it requires more detail than I can give it here). There seems good reason for a general presumption against rules when some other option exists. It is possible that an over-abundance of rules could inhibit moral growth and development, that people whose behaviour is tightly regulated by rules may lose some of their skill and efficacy in ethical decision-making. And this is a consequence to be avoided in those professions that rely on their practitioners to regularly make good ethical decisions. I would count police amongst these professions, given the many discretionary powers they have and the need to make ethical decisions about how

best to use those powers.

- Finally, it may be argued that such rules would unnecessarily interfere with the autonomy of those subject to them. Interferences with, or breaches of, autonomy are not necessarily bad; we accept many as being positively beneficial (eg. the wearing of uniforms by police has many benefits, though some might think it interferes with officers' autonomy to express themselves through their mode of dress). The main point here is that we are sometimes prepared to trade losses in autonomy against the gains that those losses will produce. Those who would advocate rules to prohibit relationships with certain groups or types of people and to require that some existing relationships be discontinued, are obliged to show that any losses to autonomy caused by those rules would be counterbalanced (to some significant degree) by particular sorts of gains.

Until these issues can be resolved, there does not seem to be sufficient justification for making 'hard and fast' rules relating to whether or not certain relationships should arise or continue for those occupying professional roles.

Are certain relationships simply wrong?

What else can we draw from the answers to the previous question? Usually, if we say something should not happen (or should not arise or should not continue) we are saying that it would be wrong for that thing to happen (or arise or continue). How does the idea of 'wrongness' fit with the conclusions just reached?

The conclusion that it is difficult to formulate a moral principle and a subsequent rule requiring professionals to discontinue or not begin certain relationships should not be over-stated. Our conclusions so far are:

- That it is difficult to justify the claim that all relationships which raise issues of professional distance will cause problems and therefore be wrong; and
- That for this reason, and others, it is difficult to formulate rules prescribing which relationships can and cannot exist.

What these two conclusions suggest is that we cannot say, before the fact, that certain relationships are wrong and should be prevented

(‘prevent’ being a forward-looking term). We can, though, certainly say *once we are in possession of the relevant facts*, that a certain relationship is wrong and action against it is justified.

Put another way: the two bulleted conclusions above, imply that we cannot make a *priori* decisions that some such relationships are wrong – which is not the same as saying that we can never decide that such relationships are, as a matter of fact, wrong. We can make such decisions – but only once we are in possession of evidence to support them. Some relationships may well satisfy one or more of (a)-(g), in which case we are certainly justified in saying that these relationships are wrong. If they are wrong, if it is clear that one or more of (a)-(g) is the case, then we have good reason to require the relationship to end or the professional to reconsider their professional role.

So, a professional organisation or employer would be justified in having a general rule stating that relationships which raise issues concerning professional distance can be reviewed for breaches of that distance and that just sanctions can be applied in response. (I will not look here at the complicated matter of fitting sanctions to breaches.)

This conclusion, recall, can only apply to Category II relationships. In terms of Category I relationships, the fact that people have no control over whether they are party to these relationships means that the relationships themselves can be neither right nor wrong. Moral blame cannot be attributed for something which a person was not free to avoid. The way such relationships are managed, however, can certainly be right or wrong and employers or professional organisations are justified in developing rules to review that management and make relevant responses.

The way forward from here

The outstanding questions are:

- If a person is in a Category I relationship in which the professional position they occupy does or could produce a conflict of interest, and/or does or could make the other person vulnerable to certain sorts of behaviour or consequences,

OR

- If a person is in or is considering a Category II relationship in which the professional position

they occupy does or could produce a conflict of interest, and/or does or could make the other person vulnerable to certain sorts of behaviour or consequences,

what can and should be done to ensure that the right thing is done by the professional in question and is seen to be done by other relevant parties?

The two underlined phrases in the foregoing raise different but related issues. To ensure that the right thing *is done*, a professional needs to know what the right thing is, they need to know what they should do. In very general terms, the right thing to do, in the circumstances we have been discussing, is:

- (a) to ensure that a conflict of interest does not stop them acting impartially; and/or
- (b) to ensure that a power relationship is not used to exploit the other party to the relationship; and/or
- (c) to ensure that one or both of these things are *seen to be done*.

More specifically, this will include (but not be limited to):

- educating professionals so they can identify relationships which raise issues about professional distance;
- educating professionals about the importance of maintaining professional distance – for themselves and for the profession as a whole;
- making it clear to professionals that even though they may be managing a problematic relationship well, this may not be enough to thwart the impression that they are either exploiting the other party to the relationship or not acting impartially towards that party;
- explaining to professionals how and why this impression can damage their credibility, and what consequences follow from diminished credibility for members of their profession;
- for professionals who are holders of public office, breaches of professional distance ‘facilitated’ by the misuse of their authority, will constitute instances of corruption – such professionals need to be taught that breaches of professional distance may be forms of corruption, drawing all the censure that corrupt behaviour usually draws in that profession. This is an important point in the policing profession where such breaches do

Moral blame cannot be attributed for something which a person was not free to avoid.

Professionals need to be taught that breaches of professional distance may be forms of corruption, drawing all the censure that corrupt behaviour usually draws in that profession.

Given the many variations between people and relationships, it is difficult to say that certain sorts of relationships will always be wrong and to make rules against such relationships.

It is also possible, and morally justifiable, to judge whether existing relationships maintain sufficient professional distance and to enforce relevant sanctions against those which do not.

not appear to me to have achieved the 'status' now given to other forms of corrupt activity.

Moreover, it should assist the professional to do the right thing if, amongst other things:

- potential 'victims' of breaches of professional distance are educated about what sorts of behaviour constitute such breaches or can reasonably give the impression of such breaches;
- these people also need to be enabled to recognise exactly what they are or are not consenting to when they engage in a relationship with a professional;
- where potential 'victims' are students in a particular profession, they should be taught also that they are free to refuse to engage in problematic relationships, and that such refusal will not adversely affect their future success in the profession.

To ensure that the right thing is *seen to be done*, minimally, the right thing has to in fact be done. The right thing cannot be seen to be done if it is not being done!! The professional will have to take steps to ensure that the metaphorical space outside which a person can act, and be seen to act, in a way that is impartial and/or non-exploitative is not breached in any way and remains 'visible' to third parties.

This can best be done by declaring the relationship in question (to an employer, supervisor, etc.) so that the professional need not be involved in (or, can avoid) the sorts of decisions or other professional actions which would breach the professional distance they ought to be maintaining.

Moreover, it also seems (though I will not explicate it fully here) that a rule or policy which *required* professionals to declare particular, specified relationships and to then avoid professional activities which might breach (or be seen to breach) relevant professional distance could overcome the six bulleted concerns listed under the iRe (ii) heading, above. That is, it is a rule that could both conceivably and justifiably be made.

It is worth restating, though, that until the professional fully understands the reasons why maintaining professional distance is important, it will be difficult (if not impossible) for them to understand why distancing themselves from

particular sorts of relationships is required of them. The importance of educating professionals on the issues and problems associated with professional distance cannot be overstated.

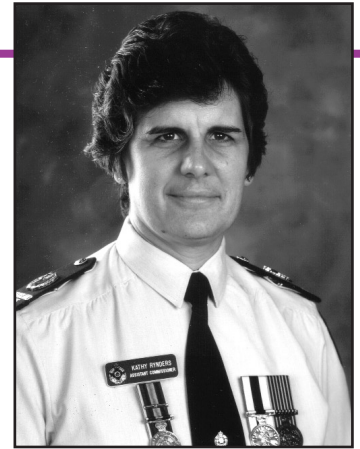
Conclusion

Professional distance issues raise difficult problems for both professionals and for those who manage or oversight them. Given the many variations between people and relationships, it is difficult to say that certain sorts of relationships will always be wrong and to make rules against such relationships. However, it is possible, and morally justifiable, to make rules to assist professionals in managing professional distance issues. Moreover, it is also possible, and morally justifiable, to judge whether existing relationships maintain sufficient professional distance and to enforce relevant sanctions against those which do not. The implementation of any such rules, however, must be constrained by the need for professionals to be properly educated about the importance of maintaining professional distance and of the strategies available for maintaining such distance. Until this education is undertaken, it will be difficult for professionals to assent to the relevant obligations that are imposed on them.

Dr Anna Corbo Crehan
School of Policing Studies, CSU
Associate Lecturer, Ethics
May, 2001
(Revised 9 July 2001)

Some Personal Insights And Lessons Learnt

By Christine Lidgard



Kathy Rynders, APM

Assistant Commissioner
Queensland Criminal Justice Commission

Kathy's career highlights: Kathy holds a Bachelor of Arts (U of Q); Graduate Diploma in Management (U of CQ); and Bachelor of Social Sciences (Justice Studies) (CSU). She is also a Graduate of the Police Management Development, Police Executive Leadership (Australian Institute of Police Management, Manly) and Executive Leadership Development (Qld Office of the Public Sector) Programs. Her additional honours include: an Australian Police Medal (APM); Queensland Police Service Medal and Logan City Community Award for her work against domestic violence. After serving in general duties from 1975 to 1986, Kathy became a Police Prosecutor. She served there until 1990 when she became an Inspector. She was the Staff Officer to the Deputy Commissioner (1990-91) and South East Region Regional Duty Officer (1991-92). Kathy next served at the Queensland Police Academy (1992-94); District Inspector, Beenleigh (1994-96); Gold Coast (1996-97) and Logan (1997-99) District Officer. She was Executive Manager, Human Resource Development Branch (1999-2000)¹.

When Melinda Tynan asked me to write an article to congratulate Kathy on her promotion to Assistant Commissioner, Queensland Police (January 2001), I initially declined. Nevertheless, the persuasive Melinda reminded me of the qualities that I had noted early in Kathy's police career, which I consider formed some of the foundations for her current success. We thought some of those insights might also assist other women seeking high offices within Australasian policing.

Soon after the announcement of Kathy's promotion, I flew home to Brisbane. My mother, Jean Miller, greeted

me with: "Kathy has made A/C!" You may wonder why my mother would be so excited. Although I don't think she has met Kathy, she has been a good friend and long time supporter to many women working their way "up the greasy (Queensland Police) pole", especially Jill Bolen.

When I phoned Kathy in preparation for this article, she acknowledged that Jill had been the first woman Superintendent, and later Chief Superintendent, in the Queensland Police. We both acknowledged Jill's current work as policing consultant for the Australian International Development and Aid Bureau (AIDAB) in Papua New Guinea (PNG), the Land of the Unexpected (LOTU), as Jill calls it.

Kathy's remarks highlighted two important points about effective leaders - a sense of history and acknowledging the work of others.

Speaking of history, Kathy's lessons for me started long before she became an Assistant Commissioner. Back in what may now seem like "the mists of the past", when we both worked on the "same shift" at the Brisbane Traffic Branch. We were then "reading radar", "writing tickets", chasing deserving motorists and so on (sorry to disappoint some, no "warries" will be revealed in this article). Even then, Kathy had a leadership charisma, a "can do" attitude and confidence, coupled with consistency and determination. However, what I noticed most was her analytical and incisive mind, a capacity for strategic thinking and grappling quickly with new concepts.

When I first met Kathy, I was struggling to finish my first degree part-time, while working shiftwork. It would have been easy to "give up", but as I observed Kathy, I was reminded why I was seeking that hard won tertiary education.

¹ Kathy comes from a (Queensland) police family. Her father, Ron was a Regional Superintendent (nowadays also an Assistant Commissioner position). Her brother, Graham is a Detective Inspector in charge of the Homicide Squad. Kathy tells me he is getting accustomed to references such as: "You're Kathy's brother."

Unlike most police recruits at the time, Kathy entered the Queensland Police already a University Graduate. As I observed these important differences and the ability to articulate her thinking and analysis, I hypothesised that this difference could be caused by mixing her natural talents with the benefits of a university education. I became all the more certain that I also wanted some of those qualities.

After some years at Traffic Operations, Kathy became a Breath Analysis operator, so our paths crossed over the occasional drink driver. Later, she became a Police Prosecutor, while I worked in a parallel area, the Legal Branch. After I left the Queensland Police in September 1989, we lost touch, but I always kept an eye (and my mother kept me briefed) on her promotions. We all celebrated when Kathy Rynders, Jill Bolen, Veronica Kane, Denise Burke and Ruth Burgess were finally made Inspectors in 1990.

When Kathy was promoted to Superintendent, we swapped letters. More recently, I wrote again to congratulate Kathy on her A/C appointment. I remember musing in that letter would we "live long enough" to see a woman Commissioner in Australia. Perhaps it could be her, if she wanted it.

Rather sooner than any of us might dared to have hoped, Christine Nixon was appointed Chief Commissioner of the Victoria Police. Spare a moment to reflect: it's never easy being the first.

Now through Christine and Kathy's examples, women in policing can have it all! Of course, there are provisos. You have to want it. You have to study, seek formal and informal training opportunities. You need mentors to provide advice and help to structure your career. You have to make and seize opportunities to get the necessary "runs on the board" to become a senior police manager. Kathy and Christine have each applied those lessons well and offer you a template to follow.

Congratulations Kathy and Christine along with my very best wishes to those equally outstanding women, who will follow you!

As a final aside, we all look forward to the time when the media reporting of a woman appointed as a senior police manager focuses on her merits rather than headlining with her gender.

About the Author:

After a long career with the Queensland Police Service, Chris is currently Deputy Director, Prevention, ATSIC Fraud Unit. She schedules and presents much of the fraud awareness and prevention training for ATSIC staff and the elected arm Australia-wide. She also conducts criminal investigations and provides strategic advice in fraud prevention to ATSIC management. She has worked in three public sectors as a strategic/corporate planner, evaluator and policy officer. Her work on National Community Safety and Crime Prevention has been honoured with an Australia Day Achievement Medallion and an Advance Australia Award (1993). She has been a supporter of the Australasian Council for Women and Policing before and since its formation.

Towards a Different Future: Positively Transforming the Gender Divide

Address by Fiona Krautil, Director, Equal Opportunity for Women in the Workplace Agency to the Australian Women Speak Conference, Canberra 27 August 2001

Fiona Krautil was appointed Director of the Equal Opportunity for Women in the Workplace Agency in 1999. Her work involves contact with more than 3000 private sector organisations as well as policy advice to the Federal Minister for Workplace Relations and Small Business. Prior to this she was head of Diversity for Westpac and Esso. She holds a Masters of Business in Change Management from the RMIT. She completed her first degree in science at the University of Melbourne.

Ladies and gentlemen, good morning. As director of the Equal Opportunity for Women in the Workplace Agency (EOWA), I am delighted to be speaking today about a topic that is very close to my heart - the need to take engage men to work with us to take action to accelerate the pace of change to achieve real EEO for women in the workplace.

In my 11 years of attending EEO conferences; debating and discussing problems and solutions to critical women's workplace issues, I find it stimulating, but also very frustrating that I am always speaking to a 95% female audience on how to drive the change process. Don't get me wrong; I greatly value, both personally and professionally, the wonderful network of supportive women both inside the organisations where I've worked, and outside, who have kept me sane in my role as a change agent rattling the cage of equity.

But the time has come for all of us to move beyond preaching to the converted, to unite in our common beliefs, to strengthen our networks, to drive change with renewed energy and purpose to address the important women's issues directly to those organisational leaders who can initiate and drive change.



I believe that legislatively driven affirmative action & EEO, with the strong support of Australian women - and I am delighted that many of you are here - has been very successful at opening up the door of the giraffe house to let the elephant in.

Today women can pretty much apply for any job in Australia and be seriously considered for the role! However, after 15 years of legislation to create a foundation for change in workplaces toward a more women-friendly environment, we have not been successful in changing the way the giraffe house is structured internally - in that, the elephant can't fit through some of the doors of the giraffe house, or get up the stairs. The challenge we now face in Australian organisations is how to address the way things work inside the giraffe house.

All too familiar concerns such as pay equity, women's career development (from the shop floor up) and work & family issues - are critical barriers for women and have proven extremely difficult to address and fix.

After working for 11 years as an internal change agent in EEO, first in the State Public Service in Victoria, then in the oil industry and then in the finance sector, I have learned that the way to achieve any progress for women in large organizations, is to work with the men. Why is this so?

Because in both the public sector and the private sector, men still control most of the resources in

But the time has come for all of us to move beyond preaching to the converted, to unite in our common beliefs, to strengthen our networks, to drive change with renewed energy and purpose to address the important women's issues directly to those organisational leaders who can initiate and drive change.

How do you pursue a women's agenda in a man's world - such as in agriculture or the oil industry - or for that fact in the finance sector - when 65% of the workforce is female, yet top management is 90% male????

The company had calculated that every female engineer who walked out the door was costing \$150K to replace.

organizations - both people and dollars - it is crucial that they are across and understand the issues and are onboard with the solutions, as they have to walk the talk of the strategic decisions an organization has to make to deliver ;real change for women.

All three organisations that I was fortunate to work in were committed to improving equal opportunity for women - but needed help in how to go about it!

In my current role as Director EOWA, my 22-person agency spends most of its time working with typically HR staff - who are predominantly female - in the private sector and community organizations with more than 100 employees.

The request we most often receive from these people is to assist them to get EEO /diversity on the corporate agenda, which means having to engage the managers who hold the resource strings - who remain predominantly male - and convince them to integrate these changes into the business strategy.

At EOWA, after two years of implementing the amended Act and developing tools and assisting employers, we are expanding our strategy to engage organisation leaders in championing change. It is time for us to communicate with business leaders - many of whom in the past have demonstrated reluctance to listen or to embrace change - to hear our message and be motivated to take action to enable women to fully contribute in their organisations. As part of working with our stakeholders, we have become customer-focused, using positive language to bring our clients along with us, albeit with a lot of encouragement and support. Our aim is for employers to view us as a partner rather than an adversary, to communicate in a way that, as Dale Carnegie said way back in the 50s, will ;win us friends and influence people.

My experience in dealing with CEOs and Managing Directors is that if you can help them identify the one reason why they have to look at new ways to grow female talent within their organisation, then, and only then will the giraffe house be rebuilt from within.

So, as women here today who have waited far too long for measurable and significant change in the imbalance of gender equality, where do we go from here?

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or for that fact in the finance sector - when 65% of the workforce is female, yet top management is 90% male????

Sadly, in Australia, - and according to recent ILO research, throughout the world - this imbalance has barely shifted despite the best attempts of legislated benchmarking and quantum changes in community attitudes towards women's workplace issues.

We all recognize that change is needed, but the real challenge is : who is going to step forward to initiate and drive real change??

The good news is that in my experience a number of senior male executives are willing to be engaged and take a leadership role on the agenda - you just have to find them!!! But! You also have to identify their business needs and convince them what's in it for them to attract their support and enable them to take action.

You also need to go where the door is open or slightly ajar. I learned early on to not bother knocking on doors that were tightly closed.

The good news is that in my experience time and the tidal change of competition finally catches up with these recalcitrant managers (although sometimes it can take too long for my liking!!!)

In the Victorian Agriculture Department, I worked in partnership with six regional managers (all male - who had all the money and the power to make change) and who could identify untapped female talent in their organizations and were willing to take risks to develop it. This was during Joan Kirner's leadership in Victoria so there was a great deal of kudos to be scored by executives and managers in supporting EEO for women in the organization.

In the oil industry, I was fortunate to work with inspiring men - one head of succession planning, and the other the technical manager (and probably the best manager I have ever worked with in terms of technical and people skills) who was responsible for growing the organization's talent.

Both men were personally committed to developing female talent - and with good reason, because the company had calculated that every female engineer who walked out the door was costing \$150K to replace and they both also saw it as the right thing to do. Both had extremely high credibility in the organization; I worked in partnership with them to drive a change agenda

that saw the organization achieve great outcomes for both women and the business which was recognised in the organization winning the Corporate Work & Family awards twice, as well as an Institute of Engineers award for turning around the attrition rate of female engineers.

We also cost-benefited work-based childcare on the basis that if we retained two middle management women a year after their maternity leave we would be ahead!!!

At the same time we also had a female Director who actively supported women in the organization and who specifically supported me through the change process. She asked all the right questions in the boardroom - but allowed the men to officially run the change process - which in my experience results in less backlash (from both men and women) in the organisation.

I have learned that the drive for change may come from the bottom of the organization, however, to effectively address the structure of the giraffe house - change has to be driven from the top. Why? Because we have to change the way we do things in organizations if women are going to be able to fully contribute to the best of their ability.

We have to put in place contemporary people management policies and practice that reflect the needs of today's diverse workforce and which support the flexibility and caring responsibilities of women and increasing numbers of men.

Managers (still mainly men) at all levels have to walk the talk of these policies e.g. appoint a pregnant female to a managerial job if she is the best candidate and create a workplace culture that is diversity friendly - not diversity toxic!!!

Female staff need to be seen not as lesser contributors, or not committed to the company, and it needs to be OK to leave the organization at a reasonable time to meet family commitments. I have also learned that the many female staff will not engage in the change agenda unless key senior male managers with high organisational credibility take the lead.

In my experience many young women see it as potentially career limiting to be labeled as someone who speaks up on women's issues and will remain reluctant to become involved on women's initiatives - such as female networking forums, women only career development etc - because they fear it will be career limiting.

Many women are not willing to take the risk - unless it is clear that the organization supports women who speak up, and demonstrates that it wishes to learn what to do differently in order to capture female talent.

The sad part is that these women are in denial, because however much they act like a man, they are different, and receive different and often lesser opportunities at this point in time and the sooner they realize it the better.

In all of the organizations I have worked, there were typically a number of women who were willing to support other women and who were prepared to stand up and be counted on women's issues.

However, it is my experience that outcomes are better if you engage the majority of women in an organization - because there is much less chance of those opposing the change process being able to divide and conquer and undermine the change process. Women are encouraged to share their stories with key male managers rather than one person becoming the advocate for all women in the organization (which can be a challenging and lonely task in my experience). So how do you do that??

You ensure that the senior male managers invite women to female networking functions - and the majority of women will come.

You also ensure that as part of the welcome the men lay it on the line that the reason they are there is a sign of their commitment to change.

They need to admit that they are keen to hear from their female staff about what is working well - but also, what needs to change. The major challenge we women face is to get male executives to put women's employment issues on the strategic organisational agenda; not to delegate it to the HR Department, where it becomes a fridge-magnet sitting visibly on the surface of an organisation without ever permeating the management core of the business.

We also need to help these senior executives to get it. For many men, the corporate culture is like water to a fish - they actually can't see the small but frustrating day-by-day challenges women face in the workplace at all levels. For many men, it's not until their highly assertive daughters start to experience some of the discriminatory behavior in the workplace that they open up their eyes.

Companies that make a difference create a safe

Managers (still mainly men) at all levels have to walk the talk of these policies e.g. appoint a pregnant female to a managerial job if she is the best candidate and create a workplace culture that is diversity friendly - not diversity toxic!!!

The major challenge we women face is to get male executives to put women employment issues on the strategic organisational agenda; not to delegate it to the HR Department, where it becomes a fridge-magnet sitting visibly on the surface of an organisation without ever permeating the management core of the business.

Let's acknowledge that men and women are different; not better or worse – just different and both have a valuable contribution to make if we are to achieve a shift in progress. Science knows it, but political correctness does everything it can to deny it.

In the western world, between half and two-thirds of all new businesses are owned by women, and women now hold over 40 percent of executive, administration and management posts.

work environment for women to raise issues and share their stories about what it is really like working in the organization.

However, it takes courage and long-term commitment to drive change. Currently the CEO of ALCOA, Mike Baltzell is driving a major change process in WA. He has appointed a professional female manager to run one of his three mines and has just put another woman in charge of one of his plants. He is shaking up the culture and having to deal with male backlash – but he is willing to do so because he believes that this is something the company has to do to maintain its competitiveness. Finally, let's acknowledge that men and women are different; not better or worse – just different and both have a valuable contribution to make if we are to achieve a shift in progress. Science knows it, but political correctness does everything it can to deny it.

So what do men and women really want? For modern men, not much has changed over the centuries. Eighty-seven per cent of men today still say their work is the most important thing in their life (pause) and 99% say they want a great sex life. (And we can all choose to ignore the other 1%)!!

For modern women, however, many of their priorities are very different from those of their mothers and grandmothers. Many women have chosen professional careers because they want some of the things men have: economic self sufficiency, prestige and power. Overall, occupational choices haven't changed much for men, with careers such as banking, law and industry still being their number one choice. There has been an increase in the number of men entering traditionally female jobs, but they remain in the minority.

For women, however, some things have changed, now 84% of working women in the USA are part of the information and service sectors.

In the western world, between half and two-thirds of all new businesses are owned by women, and women now hold over 40 percent of executive, administration and management posts. In traditional male hierarchies, women are still struggling to get the top jobs and here, perhaps is the irony: many women look at the glass ceiling, find it all too hard and simply give up their ambitions. Others shatter the ceiling, see what is beyond, don't like what they see, and move on.

And a small percentage of women who aspire to the top succeed, cling to what they have achieved and defend their status, sometimes to the detriment of other females in the organization and sometimes supporting the development of other female talent and trying to improve the work culture for them – but with minimal success.

In most political systems, less than five per cent of politicians are female although they seem to attract 50 per cent of the media coverage. So, if you are a woman working in a traditional male hierarchy, you have one or two choices for success: one is to quit and get a job where women have a fair go; the other is to behave more like a man!

The way forward for EOWA is to forego political correctness, to speak to business leaders on their terms, to keep an open mind and foster inclusivity rather than exclusivity.

Let's just admit that men and women are not the same, and start celebrating our differences! and more importantly, recognise that the diverse perspectives each of us brings to the table, if fully valued by each other, will improve the outcomes for working women, Australian organisations – both government and private sector and for Australian society!

Women and Justice – Is There Justice for Women?

Address by the Honourable Justice Roslyn Atkinson

27 August 2001 to the Office of the Status of Women "Australian Women Speak Conference", Canberra

WOMEN AND JUSTICE – IS THERE JUSTICE FOR WOMEN?

May I thank the Office of the Status of Women for organising this important conference bringing us all together and for giving me the honour of addressing you. The topic on which I have been asked to speak today is a most challenging one.

We live in a democratic society governed by a constitution and the rule of law. The legal system in such a society is predicated on the assumption that all citizens, whatever their sex, race or religion, or their access or lack of it to wealth and power, are equal before the law and will receive equal and fair treatment by the law. To suggest that this is not true for any individual or social group is to question the very basis of our civil society, our democracy. Each citizen of this country is entitled to expect justice according to law.

Women interact within the legal system in two major ways: as participants within it, and as citizens affected by it. This is because the judicial system is the third arm of government and, like the legislative and administrative arms of government, affects each one of us even if we are not active participants in it. It is necessary therefore to examine the system to determine whether women are treated unfairly or face discrimination within it because of their gender.¹

It is hardly controversial these days to point out that women, along with many minority groups, have not received equal treatment in the past in our courts. Two questions then require examination:

1. do the practices of the past which led to injustice to women continue to inform current legal practice and judicial decision making and, if they do, what has been done and what should be done to correct this situation?
2. are there still laws which need to be reformed before women can expect true equality before the law?

In my remarks today, I would like to consider each of these difficult issues in turn.

Unjust practices

Women participate in the legal system as litigants, victims, defendants or witnesses; or as lawyers, jurors, or much more recently, as judges. The under-representation of women in the judiciary and indeed until the appointment of Roma Mitchell to the Supreme Court of South Australia in 1965, their complete absence, led to women being treated not as equals but as what Simone de Beauvoir referred to as the other – beings with a different, less rational and hence less reliable view of the world. This reflected itself in the type of legal reasoning which was applied to women. Let me give an example.

The evidence of women and children was historically treated with suspicion in the criminal courts. In part this was due to the insidious influence of myths and stereotypes and in part, particularly where they claimed to be victims of sexual offences, it was due to rules relating to the corroboration of the evidence of such witnesses. Why should the evidence of certain witnesses be considered unreliable? if, for example, two people commit a crime together and one gives evidence implicating the other as having greater responsibility, a jury may be entitled to treat the evidence of the accomplice with some suspicion, particularly if that offender has been given immunity from prosecution. Judges therefore often warn juries that it is dangerous to convict on the uncorroborated evidence of an accomplice.

Unfortunately, however, the rule did not stop there. Let me give a reasonably recent example of the way the rule extended, offensively, to put victims of sex crimes in the same category as accomplices. As recently as 1987, the Law Lords who comprise the Judicial Committee of the Privy Council in London held:²

"The rule requiring a warning to be given to a jury of the danger of convicting on uncorroborated

evidence applies to accomplices, victims of alleged sexual offences and children of tender years. It will be convenient to refer to these categories as 'suspect witnesses'.

It is precisely because the evidence of a witness in one of the categories which their Lordships for convenience have called 'suspect witnesses' may be of questionable reliability for a variety of reasons, familiar to generations of judges but not immediately apparent to jurors, that juries must be warned of the danger of convicting on that evidence if not corroborated; in short because it is suspect evidence."

The generation of judges to whom they refer did not include women. There has never been a female judge in the House of Lords, England's highest court of appeal. This year a woman, Dame Sian Elias, sat for the first time on the Privy Council³ which sits in London and hears appeals from some Commonwealth countries, but that was only because she is the Chief Justice of New Zealand and entitled because of her position to sit in the Privy Council. The senior Law Lord, Lord Gingham said on his appointment last month that he expected there to be an appointment of a woman to that court within five years.⁴

It is perhaps little wonder that there was great controversy earlier this year when feminist lawyers argued that the all male Law Lords were an inappropriate body to adjudicate on a test case on rape law to determine whether a woman's previous sexual history should be admissible evidence in a rape trial.⁵ The case went ahead....

The rule to which I referred, that the evidence of "victims of alleged sexual offences" had to be corroborated, drew upon various obnoxious stereotypes:

- (a) that women are irrational and unreliable;
- (b) that a woman was either an unwilling participant in a sexual offence or if she was not, she was a whore or an adulterer. A woman could not in law therefore be raped by her husband;⁶
- (c) that, from the male perspective, rape is an easy accusation to make and a very difficult one to disprove.

This rule led to various complex, and once more arguably stereotypical, evidentiary rules such as:

- (a) fresh complaint. A woman is expected to complain of a sexual offence against her at the first reasonable opportunity - doing so is said to be expected of a truthful woman who has been sexually assaulted.⁷ If she doesn't so complain, the

jury would be able to take that in account in deciding whether to believe her;⁸ and

- (b) distress. The distressed condition of a woman or girl as observed by third persons was said to be capable of corroborating her complaint of rape. However the rule could be used to further humiliate a female victim. In a Queensland case decided in 1965,⁹ at a time when I myself was 16 years old, a number of men were convicted after a 17 year old trainee nurse was packraped. After the first pack-rape, the victim escaped but was then taken by other men to a rubbish dump where she was raped by five more men. She was taken elsewhere, again raped by the same men and then abandoned. She was admitted to hospital where she was a patient for eight weeks, emerging from time to time to give evidence at committal hearings. The witness who first saw her after she had been so brutally raped said she was in a dazed and hysterical condition, dishevelled and dirty.¹⁰ The accused each gave evidence alleging she had consented. The court held on appeal:¹¹

"I have come to the conclusion that the evidence had no weight as corroboration and that it should not have been left to the jury as corroborative evidence at all ... I [do not] think that in the circumstances of these cases, the evidence tended to show that the crimes charged in the indictments had been committed. It seems to me that the complainant's dishevelled condition is equivocal; as the Judge suggested to the jury in one of the cases, it may have been caused by rough handling during a succession of acts of intercourse to which she had consented. Her condition of distress could also perhaps have been caused by remorse. The evidence, therefore, lacks both the essential characteristics of corroborative evidence. It did not, in my opinion, in any of the cases, confirm the evidence that the crimes had been committed, or that the accused committed them."

Is it any wonder that women were reluctant to press ahead with such charges after they were the victims of an offence if they were to be then further victimized by such attitudes.

Parliaments in this country have attempted to change this situation by passing laws¹² saying that a judge is not required to warn the jury that it is unsafe to convict the accused on the uncorroborated testimony of a witness. While a judge is not prevented from making a comment on evidence given in a trial that it is appropriate to make in the interests of justice, the judge must not warn or suggest in any way to the jury that the law regards any class of complainants as

unreliable witnesses. I am unaware of any other case in which distress following an alleged pack-rape has been held to be ambivalent and the authority of the decision I referred to has subsequently been rejected.¹³ The High Court has observed that the assumption that a victim of a sexual offence will complain at the first reasonable opportunity is an assumption of doubtful validity.¹⁴

How did our laws become infected with these attitudes? As I have said, the first reason was that women were not amongst the decision makers within the system. Secondly, many of the men who were, held biased views about women which went unchallenged. One of these was the seventeenth century judge Lord Hale who is the source of many of the inaccurate observations about women who had been sexually assaulted. It was he who first made the inaccurate observation that rape "is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent."¹⁵ His observations about women in other contexts are therefore instructive. Ironically, one of the most notorious witches' trials of the seventeenth century was held before the same Sir Matthew Hale who was a fervent believer in witchcraft.

Part of the evidence in the trial of the alleged witches was given by a doctor. He had suggested hanging up a blanket for a night outside the home of the apparently bewitched to see what came to inhabit it. A toad fell from the blanket which exploded when thrown into the fire. The next day one of the accused women was seen with burns to her face, leading to the inference being drawn that she had disguised herself as a toad on the previous night.

Some of the lawyers involved in the case were still doubtful so an experiment was conducted. The children who were said to be bewitched went into paroxysms when they saw the putative witches. The fits stopped only when the alleged witch touched the children. An experiment was carried out where the accused witch was sent for when the child was in such a state but an apron was held in front of the child's face so she could not see. Another old lady touched the child. The paroxysm immediately ceased. The doubts of the sceptics were confirmed. But Lord Hale accepted the unlikely explanation given by the father of the children who claimed that this was positive proof of bewitchment since it was obviously further sorcery that led the children into error. The two unfortunate widows were convicted and hung. He was, it seems, as gullible about accusations of witchcraft against women as he was sceptical of claims of rape by women.

Unfortunately, Lord Hale's adages with regard to rape and the reliability of the evidence of women who

claimed to be victims remained as unquestioned axioms of the law long after his deluded views on witchcraft had been forgotten.

This brings me to the second topic:

Have women achieved true equality under the law?

We have come a long way from the days when women were accused of witchcraft. There are, however, a number of problems suggesting the need for reform remains. Many of these laws affect men as well as women but in practice have a greater impact on women than on men. In other words the discrimination wrought by these laws is indirect rather than direct. They appear on their face to be neutral but have a differential impact on women from their impact on men.

The legal system has for the past decade been endeavouring to deal with the emotional and physical damage suffered by children who are now adults, who allege they were physically or sexually abused in their homes or in institutions where they lived or by other people whom they trusted, and who exercised control over them. Complex directions, such as to the effect of delay, are required to be given in criminal prosecutions of these alleged predators. A trial judge is required to warn a jury that it is dangerous to convict the accused in a case where the prosecution relies on the evidence of a complainant who alleges sexual abuse many years ago.¹⁶ In civil cases, a plaintiff has to overcome the minefield of Limitation Acts¹⁷ which prevent them from having their claims go to trial.

In civil cases, if a woman's husband is killed by another's negligence she is still required to undergo the humiliation inherent in a judge determining how "marriageable" she is and therefore by how much her damages should be reduced. Age and conventional good looks have traditionally been used as markers of the marriagability of women. A man who is economically dependent on his wife finds himself in the same position but such a case is much more uncommon and a man's physical attractiveness has never, to my knowledge, been considered.

Let me simply list a few other examples. I do not suggest these are exhaustive. In personal injury cases where damages are awarded for care provided free of charge, more often than not by a wife, mother or daughter, no mechanism exists for that award to be made to her or held on trust for her.¹⁸ There is also legal uncertainty as to the availability of fertility services regardless of a woman's marital status or sexuality.

In the criminal law, the law has had great difficulty giving effect to the different ways in which women tend to react when provocation or self-defence may be open as defences to a criminal charge against them.¹⁹ Aboriginal women represent a disproportionate percentage of the female offenders sentenced to imprisonment.²⁰ Many women are doubly disadvantaged.

It is in the broadest interests of the community that law reform in these and many other specific areas be considered.

Moves for reform of the law

The Supreme Court in Canada has been a shining light in endeavouring to redress the balance, to address and reject stereotypes. In *R v Ewanchuk*,²¹ for example, the court roundly criticized the mythical assumptions made both by a trial judge who took the view that a woman who said "no" to sexual activity was really saying "yes", "try again", or "persuade me" and also by an appeal court judge who said of the woman who was sexually assaulted by the accused in his caravan when she went for a job interview, "it must be pointed out that the complainant did not present herself to [the accused] or enter his [caravan] in a bonnet and crinolines." He also thought it relevant to mention that she was a mother of a six-monthold baby who lived with her boyfriend and another couple. As Madame Justice L'Heureux-Dube observed,²² even though the appeal court judge asserted he had no intention of denigrating the complainant:

"... one might wonder why he felt necessary to point out these aspects of the trial record. Could it be to express that the complainant is not a virgin? Or that she is a person of questionable moral character because she is not married and lives with her boyfriend and another couple? These comments made by an appellate judge help reinforce the myth that under such circumstances, either the complainant is less worthy of belief, she invited the sexual assault, or her sexual experience signals probable consent to further sexual activity. Based on those attributed assumptions, the implication is that if the complainant articulates her lack of consent by saying "no", she really does not mean it and even if she does, her refusal cannot be taken as seriously as if she were a girl of "good" moral character. "Inviting" sexual assault, according to those myths, lessens the guilt of the accused . . . "

Madame Justice L'Heureux-Dube is one of three female Justices, which include the Chief Justice, of the Supreme Court of Canada. They represent one-third of the membership of the court. Australia, on the other

hand, has had only one woman Justice on our highest court, Justice Mary Gaudron who was appointed in 1987, who gave generous acknowledgment to the pioneering work of Dame Roma Mitchell on her appointment.

I am a member of a court, the Supreme Court of Queensland, where major inroads have been made into the historic under-representation of women as judges. On a wall of the floor of our Court which contains the Judges' chambers, there is a collection of photographs of judges on significant occasions. Every year we hold a two day conference immediately before Easter. The photograph taken at Easter 1998 shows a lone female judge with her 22 male colleagues. By the following year there were four female judges; then by Easter 2000, there were 6 female judges. Now on a court of 24 judges, 7 are female and 17 male. At almost 30% this is the highest proportion of female judges in any superior court in Australia. While 28% of the Family court judges, 17% of the Northern Territory Supreme Court, 12% of the Supreme Court of Western Australia are female, only 10% of the Federal Court, 9% of the Supreme Court of New South Wales, 7% of the Supreme Court of South Australia and 6% of the Supreme Court of Victoria are female; and there are no female judges in Tasmania or the ACT.²³

May I suggest that the appointment of women as judges has two linked effects, although neither is easy to quantify. The first is that it demonstrates in a very tangible way that women have a right to take their place, an equal place, amongst those who govern our society, and secondly that justice should be dispensed by, as well as for, women as well as men.

Women as judges should and will, in my view, make a difference to the vindication of the rights of all people. Empirical research in the United States has tended to confirm this. In an attempt to determine the decision making patterns of women judges, research was undertaken into the decision making of state supreme court judges from 1982 to 1998 in two substantive areas of law not generally identified as "women's issues": obscenity and death penalty sentencing. Controlling for other variables, the research found that women judges in state supreme courts tended to make more liberal decisions to uphold individual rights in both death penalty and obscenity cases. Interestingly, and as the researchers said, equally importantly, the presence of a woman on the court tended to increase the probability that male judges would adopt a similar position.²⁴

The point is not to replace a judiciary which has been perhaps unconsciously biased in favour of a male point

of view with one which is biased in favour of a female point of view but to ensure that the public has faith that the court will be impartial and be able to recognise and therefore eliminate unconscious bias. This can only happen if we do not confuse objectivity as being defined by a male point of view or perspective. A survey recently conducted in New Zealand showed that women who have experience of the civil court or tribunal system were far less confident that they were treated fairly and that a fair result had been achieved than men who had experience of the civil system.²⁵

The Senate Committee²⁶ of the Australian Parliament, which reported on Gender Bias and the Judiciary in May 1994, noted the arguments in favour of the appointment of more women to the judiciary were first that, to maintain public confidence in the judiciary, it must be seen to reflect the different parts of the population it serves and to offer role models for women. And second, the appointment of significant numbers of women is likely to affect the nature of judicial decision-making through potentially different decision-making styles, and by redressing areas of law developed from distinctly male perspectives' such as those dealing with women's sexuality.²⁷

Justice Mary Gaudron said on the formation of the Australian Women Lawyers in September 1997:²⁸

"I believe that having acknowledged and asserted their difference, women lawyers can, with the assistance of feminist legal theorists, question the assumptions in the law and in the administration of the law that work injustice, either because they proceed by reference to differences which do not exist or because they ignore those that do. And having become sensitive to those matters, it will not be long before there is a realisation of the need to be sensitive to the different experiences and circumstances of others, to articulate those differences when necessary, to question the assumptions of the law as it affects them. In short, to be sensitive to the needs of justice."

In July 2000, her Honour's sentiments were echoed in England by Cherie Booth QC who said:²⁹

"Judges and lawyers should be diverse because the issues they handle [are] diverse. Law and the legal profession must be representative to strengthen public confidence. It must be multifaceted, then it will be more in touch with society."

In July 2001, Ms Booth said that the under-representation of women as judges threatens to undermine the legitimacy and authority of international courts. "A court without women, or with

an insufficient number of them, cannot be representative of the 'main forms of civilisation.'"³⁰

However, the appointment of women to the bench is only one of the changes to the legal system which must occur. While the appointment of female judges is necessary, it is hardly sufficient.

Judges are after all obliged to apply the laws passed by parliament and follow binding precedent no matter what their personal views may be. Justice should be dispensed for women, not just by women. The rights of all citizens free of irrelevant bias, such as gender bias, can only be protected if those rights are able to be vindicated by the substantive law. In Canada, for example, in common with most democratic and developed countries, a citizen's right to be free of sex discrimination is constitutionally protected. The effect of this can be seen in the analysis of the court in the case to which I have referred when Madame Justice L'Heureux-Dube said:³¹

"Violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights. As Cory J wrote in *Osolin*,³² sexual assault 'is an assault upon human dignity and constitutes a denial of any concept of equality for women'. These human rights are protected by s 7 and 15 of the Canadian Charter of Rights and Freedoms and their violation constitutes an offence under the [criminal code]."

In Australia, equality rights are protected by the *Commonwealth Sex Discrimination Act and State Anti-Discrimination Acts*. These Acts are very effective in allowing women and men to take action against discrimination in various important areas of the activity but they do not have the overriding force given to Charters and Bills of Rights and other means of constitutionally protecting rights and freedoms and eliminating unfair discrimination.

The need for an overriding protection of human rights has been recognised in jurisdictions very similar to our own. In July 2001, Lord Woolf, the Lord Chief Justice of England and Wales, delivered a strong speech to a conference of Hong Kong judges and lawyers concerning the need for global human rights enforced by strong independent judiciaries.³³

The emphasis on the vindication of rights empowers those who have been the object of discrimination. In South Africa, rights to equality are protected by s 9 of the Constitution. The inspirational and aspirational nature of the Constitution is then reflected in the preamble of their Equality Act³⁴ which provides:

"This Act endeavours to facilitate the transition to a democratic society, united in its diversity, marked by human relations that are caring and compassionate, and guided by principles of equality, fairness, equity, social progress, justice, human dignity and freedom."

Unlike South Africa, our democracy was born out of consensus not struggle. We have perhaps more in common with Canada, the United Kingdom and New Zealand. Yet all of these nations have recognised the importance of human rights. The Canadian Charter of Rights and Freedoms was enacted in 1982; in 1990 New Zealand passed a Bill of Rights Act; and the Human Rights Act became law in the United Kingdom in 1998. The fabric of society in those countries has been strengthened rather than torn by the protection of human rights.

In conclusion, in answer to the question, is there equal justice for women, the answer must unfortunately be that there is not; not entirely; not yet. It is my view that fundamentally women's rights are human rights. By protecting human rights we enhance women's rights by ensuring we strive for a just society free of irrelevant inequality. To ensure equal justice for all of our citizens, there is great value in having a yardstick against which issues of equality can be measured as they are in other common law countries. That is the real advantage of the legislative or constitutional protection of human rights.

ENDNOTES

- 1 Recent research suggests that the confidence that non-users have in courts is affected by their perception of whether there is equal treatment by the courts so that women and minority groups are not discriminated against: S.C. Benesh and S.E. Howell, "Confidence in the Courts: A Comparison of Users and Non-Users" (2001) 19 Behavioural Sciences and the Law 199 at 211.
- 2 A-G of Hong Kong v Wong [1987] AC 501 at 509, 511
- 3 The Times, 6 February 2001, p.9
- 4 F. Gibb, "The Supreme Sacrifice" The Times, 17 July 2001
- 5 F. Gibb, "All-male Law Lords 'Biased Over Rape Case'" The Times, 20 March 2001, p. 4;
F. Gibb, "Law Lords Reject Sex 'Bias' on Rape Law" The Times, 21 March 2001, p.8; M. Stephenson, "Absence of Women in Highest Court" The Times, 23 March 2001, p.23
- 6 M. Hale, *Historia Placitorum Coronae*, 1734 at 636 quoted in G. Geis, "Lord Hale, Witches and Rape" (1978) 5 British Journal of Law and Society 26 at 40 - 41
- 7 R v Lillyman [1896] 2 QB 167; Hawkins' Pleas of the Crown: "It is a strong, but not a conclusive, presumption against a woman that she made no complaint in a reasonable time after the fact." A woman was expected to raise a hue and cry as a preliminary to an accusation of rape: R v Osborne [1905] 1 KB 551
- 8 Kilby v The Queen (1973) 129 CLR 460 at 465
- 9 R v Richards [1965] Qd R 354
- 10 (supra) at 360
- 11 (supra) at 360
- 12 eg Criminal Code (Qld) s 632; Criminal Law Consolidation Act 1935 (SA) s 242(4); Evidence Act 1906 (WA) s 35; Evidence Act 1995 (NSW) s 164; Evidence Act 1971 (ACT) s 76F; Crimes Act 1958 (Vic) s 61.
- 13 R v McK [1986] 1 Qd R 476 at 481; R v Major and Lawrence [1998] 1 Qd R 317.
- 14 M v The Queen (1994) 181 CLR 487 at 515; Suresh v R (1998) 72 ALJR 769 at 770; see also R v Schneider QCA No 128 of 1998 at [11] - [12] per Thomas JA
- 15 S.C. Taylor, "And Now Your Honour, for my next Trick ...! Yet Another Defence Tactic to Construct the Mad, Bad and Colluding Mother and Daughter in Intrafamilial Sexual Assault Trials" (2000)14 Australian Feminist Law Journal 121 at 125, G. Geis, 'Lord Hale, Witches and Rape' (1978)5 British Journal of Law and Society 26; G. Geis, 'Revisiting Lord Hale, Misogyny, Witchcraft and Rape' (1986)10 Criminal Law Journal 319.
- 16 See eg Doggett v The Queen [2001] HCA 46. But note the criticism of McHugh J particularly at [81].
- 17 Limitation of Actions Act 1974 (Qld); Limitation Act 1969 (NSW); Limitation Act 1985 (ACT); Limitation of Actions Act 1936 (SA); Limitation Act 1974 (Tas); Limitation of Actions Act 1958 (Vic); Limitation Act 1985 (WA); Limitation Act (NT).
- 18 P.W. Young, "Fairness and damages for carers" (2001) 75 ALJ 213
- 19 B.A. Hocking, "Frightened Women, Angry Men and the Law of Provocation" (1999) 6(1) PPL 57; "Gender-Specific Response Patterns in Criminal Defences" (1996) 20 Crim LJ 185; P. Esteal, "Reconstructing Reality" (1995) 20 Alt LJ 108; G. Hubble, "Self-Defence and Domestic Violence: A Reply to Bradfield" (1999) 6(1) PPL 51
- 20 E. Baldry, "Convicted Women: Before and After Prison" (1997) 8 Current Issues in Criminal Justice 275 at 277
- 21 [1999] 1 SCR 330 at [87] - [88]
- 22 (supra) at [89]
- 23 Approximations based on the following statistics: Family Court of Australia - 15 female judges out of a total of 53 judges; Supreme Court of the Northern Territory - 1 female judge out of a total of 6 judges; Supreme Court of Western Australia - 2 female judges out of a total of 17 judges; Federal Court of Australia - 5 female judges out of a total of 49 judges; Supreme Court of New South Wales - 4 female judges out of a total of 45 judges; Supreme Court of South Australia - 1 female judge out of a total of 14 judges; Supreme Court of Victoria - 2 female judges out of a total of 31 judges.

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- 25 J. Morris, "Women's Experiences of the Justice System" (1997)27 VUWLR 649 at 662
- 26 Parliament of the Commonwealth of Australia, Gender Bias and the Judiciary, Report by the Senate Standing Committee on Legal and Constitutional Affairs, 1994
- 27 B. Naylor, "Equality Before the Law: Mission Impossible? A Review of the Australian Law Reform Commission's Report Equality Before Law" (1997) 23 Monash University Law Review 423 at 432 - 433
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- 29 F. Gibb, The Times, 20 July 2001
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- 33 F. Gibb, "Woolf Stresses Human Rights" The Times, 25 July 2001, p. 2
- 34 Promotion of Equality and Prevention of Unfair Discrimination Act 2000

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Working in fear: Experiences of workplace violence

A report by Oonagh Barron. Published by JobWatch, Victoria

Review by Melinda Tynan

While this report does not focus on policing or any other industry in particular, its findings have significant implications for police services and reiterate conclusions drawn by researchers into gender in policing; that the vast majority of victimisation within the workplace is about the exercise of power and control.

Using research conducted with a range of workers in Victoria, the report examines the extent of workplace violence, who the perpetrators are, the effects of the violence on the victim and the responses from both the workplace itself and from other agencies (including police).

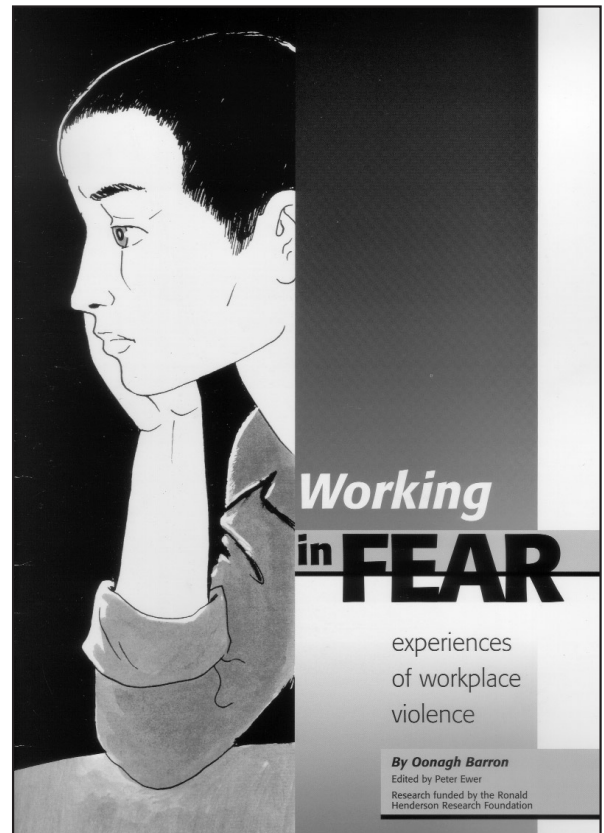
It also tackles many of the myths around workplace violence that have, in the past, often ensured that violence was treated as insignificant or acceptable. In many workplaces, violence is frequently regarded as a "rite of passage" through which junior staff are expected to either 'cop it sweet' or 'chicken out'.

Most significantly for police services, the report examines the experiences of the employee/victim who leaves employment as a last resort in order to escape the violence, frequently after complaints to management have fallen on deaf ears or simply not been acted upon. In remarking upon one such case, the Judge observed:

...early incidents or signs of violence are often ignored in the workplace on the basis that it is hoped that the parties will deal with the issues themselves or the unpleasantness will simply go away. This is not good enough in the employee relationship or indeed in any other situation. Inaction by a responsible employer is in my view in conflict with their general duty at Common Law and under the Occupational Health and Safety legislation....

A range of solutions are also proposed within the report, including the development of cultural change programs by police with a view to 'legitimising' effective responses to workplace violence as part of police duties.

This report provides clear indicators for police organisations on two levels, firstly as employers with a



duty of care to their own employees. It is still commonplace for police employees who are victims of violence and harassment within police organisations to leave the organisation either on sick leave or through resignation when management simply refuses to acknowledge the problem. Secondly, as organisations with a duty of care to victims of workplace violence in the broader community, frontline police need to be aware of the dynamics of workplace violence and the needs of these victims.

You can order a copy of the report through JobWatch at: www.job-watch.org.au or telephone (03) 96629458

bluey day

The Bluey Day National Head Shave was held in Melbourne this year for the first time since it began in 1995. It was held at the Crown Entertainment Complex and brought together emergency service personnel from all over Australia. Each person was required to raise \$1,000 to have his or her head shaved. Two hundred people lined up at the Crown and amongst them was Acting Superintendent Jill Wood, a Committee member of ACWAP. Jill has participated previously but has never undergone the full head shave. Chief Commissioner Christine Nixon was one of the guest "shavers" and she wielded the clippers with some degree of expertise. Chief Commissioner Nixon described the day as an enormous achievement and indicated that \$3.1 million had been raised over recent years. Jill left the Crown wearing a beanie and then travelled to Tasmania for a 3 day conference.

It snowed on Mt. Wellington and the beanie became a permanent fixture.



Australasian Council of Women and Policing Inc.

(Incorporated under the Associations Incorporation (ACT) 1991)

Application for Membership

Secretary PO Box 755, Dickson, ACT 2602

Telephone: 02 6278 3069 Email: inquiry@auspol-women.asn.au

I,
(full name of applicant)

of

.....
(address)

hereby nominate to become a member of the Australasian Council of Women and Policing Inc.
In the event of my admission as a member, I agree to be bound by the rules of the council for
the time being in force.

Enclosed is cheque/money order for \$..... for annual/life/corporate (cross out those
not applicable) membership of the council.

.....
(signature of applicant)

.....
(date)

Membership fees:

Lifetime Membership (individual)	\$300
Annual Membership (individual)	\$30
Corporate Membership	\$60 per year

Complete this form and mail with payment to:
Treasurer, ACWAP, PO Box 755, Dickson, ACT, 2602, Australia.

Please make cheques payable to:
Australasian Council of Women & Policing

