

Article

In Pursuit of Justice: The Women's Rights Journey

By Helene Chryssidis

To truly understand the importance of International Women's Day, reflecting on the historic and profound things women have achieved is imperative. This article offers a snapshot of the changes the women's rights movement strived for and achieved in Australia. It highlights why International Women's Day should be embraced and celebrated by *all*.

As Malala Yousafzai so eloquently said, "*I raise up my voice – not so that I can shout, but so that those without a voice can be heard. ... We cannot all succeed when half of us are held back.*"

The suspension of the legal existence of married women

History has shown that the prejudice against women was not only embedded in society, but it was the law. Throughout history, women have been treated as someone else's property, including in marriage. Sir William Blackstone observed that "*the very being or legal existence of the women is suspended during the marriage and...consolidated into that of the husband.*"¹

Before Australia became a federation, England's legal regimes governed married women's, albeit few, legal property rights.² Remarkably, the law once dictated that after women married, women's rights in any property or wages were forfeited as ownership was

¹ Sir William Blackstone, *Commentaries on Laws of England: Of Husband and Wife* (Chapter 15), (1765-1769), Co Lit 112; also see *Murray v Barlee* (1834) My. & K 209 at 220 per Lord Bougham: "[a wife's] separate existence is not contemplated; it is merged by the coverture in that of her husband."

² A History of Married Women's Real Property Rights

transferred to their husbands. Moreover, a husband was deemed the sole legal guardian of any children. He had the right to remove children from a mother's care at any time.

The lack of property rights for married women became a cornerstone of the suffrage movement in Australia in the 1890s. History indicates that for many women, the movement was personal. In Australia, Dora Montefiore was a founding member of the Womanhood Suffrage League of New South Wales in 1891.³ The defining moment for Montefiore was when her husband died, and she was informed that the only reason her children remained in her care was because her late husband was silent on their guardianship. Montefiore said from that moment on, '*I was a suffragist (though I did not realise it at the time) and determined to alter the law*'.⁴

This movement led to Australia introducing the *Married Women's Property Act*⁵ in the early 1890s. For the first time, married women had separate rights. It meant that married women were no longer required to forfeit their property rights and could enter contracts.⁶

Women's right to vote

All Australians over 18 now have the right to vote. It is an essential and healthy democratic right that means every member of our community now enjoys

³ <https://www.womenaustralia.info/entries/montefiore-dorothy-frances/>

⁴ Dora Montefiore, *From A Victorian to a Modern* (1927), <https://www.marxists.org/archive/montefiore/1925/autobiography/03.htm>.

⁵ See *Married Women's Property Act 1983* (NSW), *Married Women's Property Act 1890* (Qld), *Married Women's Property Act 1893* (SA), *Married Women's Property Act 1893* (TAS), *Married Women's Property Act 1884* (Vic), *Married Women's Property Act 1892* (WA).

⁶ *Ibid*

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the freedom to engage in the political process that determines the leaders we want to represent us. Our leaders make critical decisions about every aspect of our lives, from planning to building essential infrastructure, determining taxes, workplace rights, and the very laws and values that shape our communities and define Australia's identity on an international stage. However, for much of Australia's history, these leaders did not represent women. Women could not vote, and they could not stand for parliament. They had no voice.

Before women had the right to vote, many men believed that women did not want to vote and were not educated or intelligent enough to hold an opinion. Many felt that women should focus on raising children and doing housework, enabling men to decide on the policies that affected women.⁷ Many parliamentarians believed women were not emotionally or intellectually capable of properly participating in politics. Others also felt that women were stepping outside their traditional roles and that giving them the vote would undermine a husband's position in the family.⁸

The right to vote was critical to creating change and influencing the legislative decision-making process. Without this fundamental right, women were not empowered to determine their direction in life.

In South Australia, women were lobbying for change. On 23 August 1894, the Constitutional Amendment (Adult Suffrage) Bill was presented to the South Australian Legislative Council. The Bill narrowly passed, and then on 18 December 1894, the South Australian Parliament passed the *Constitutional Amendment (Adult Suffrage) Act*, providing equal political rights to both men and women. The Bill was officially made law in 1895, and South Australia became the first Australian colony to give women the right to vote and only the fourth place in the world to do so. At the same time, women in South Australia became the first in the world to be able to stand as candidates in state elections.⁹

⁷ National Library of Australia, Women's suffrage, <https://www.nla.gov.au/digital-classroom/senior-secondary/shoulder-shoulder-feminism-australia/womens-suffrage#>

⁸ National Library of Australia

⁹ National Library of Australia

When Australia became a federation, only women who had the right to vote in their home state were entitled to vote in federal elections. This meant that until 1902, when the *Commonwealth Franchise Act* was enacted, only non-indigenous women in South Australia and Western Australia had the right to vote in federal elections.

Women's right to drink in public bars

In what may seem absurd now, in the 1960s, women were prohibited from drinking in public bars. Whilst in the scheme of equal opportunities, the right to drink in public bars may seem low on the priority list, Merle Thornton and Rosalie Bogner seized the opportunity to right a wrong.

Thornton and Bogner had previously lobbied for a change to the Licensing Act, which governed hotels to allow women access to public bars. The changes were refused. Then, in March 1965, Thornton and Bogner chained themselves to the public bar in the Regatta Hotel in Brisbane. This was a defining moment that was captured and portrayed nationally and internationally. In 1970, the prohibition on women drinking in public bars was finally abolished.

The marriage bar

The "marriage bar" is a difficult concept to comprehend. The "marriage bar" was introduced in the 1900s and banned the employment of married women in the Commonwealth Public Service. It was legislated in the *Commonwealth Public Service Act 1922*. Shockingly, section 49(2) of the *Commonwealth Public Service Act 1922* expressly stated:

49.—(1.) No married woman shall be eligible for employment, either permanently or temporarily, in the Commonwealth Service, unless the Board certifies that there are special circumstances which make her employment desirable. Employment of married women.

(2.) Every female officer shall be deemed to have retired from the Commonwealth Service upon her marriage, unless the Board certifies that there are special circumstances which make her employment desirable.

The "marriage bar" was intended to prevent women from "stealing" men's jobs and to increase the birth rate. The impact of this decision meant women were forced out of the workforce, prohibited from earning an income and had to be wholly dependent on their

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husbands. Disappointingly, the Union was one of the strongest supporters of the “marriage bar”.

What is more, the “marriage bar” had a dramatic impact on women in the workplace, as opportunities for women were extremely limited. Women were not trained or provided opportunities as it was deemed to be a “waste” – why invest time and money into a woman when she will be prohibited from working once married? It was also considered to be “inappropriate” for women to supervise men in the workplace.

As a result, women often concealed their marital or relationship status to continue to work. It was not until 29 October 1966, only 58 years ago, that the *Public Services Act* was amended and repealed section 49. Disappointingly, Australia was one of the last countries in the world to lift this ban.

The movement for women to practise in law

Prior to 1902, women in Australia were not permitted to vote in federal elections, let alone practise as lawyers. However, in parallel with the history of the suffragette movement, the campaign to allow women to practise law resulted in legislative change throughout Australia.

Victoria was the first state in Australia to permit women to practise law by introducing the *Women’s Disabilities Removal Act in 1903*. Over the years, the remaining states followed – Tasmania in 1904¹⁰, Queensland in 1905¹¹, South Australia in 1911¹², New South Wales in 1918¹³ and, albeit tardily, Western Australia in 1923¹⁴.

In 1905, Grata Flow Matilda Greig was the first woman in Australia to be admitted to practise as a barrister and solicitor in Australia. However, it was not until 1987 that the first woman was appointed to the High Court of Australia, The Honourable Justice Gaudron. Over 110 years after women were first permitted to practise law, in 2017, Chief Justice Kiefel was appointed the Chief Justice of the High Court of Australia. The first woman to be appointed Chief Justice.

¹⁰ *Legal Practitioners Act 1904* (Tas)
¹¹ *Legal Practitioners Act 1905* (Qld)
¹² *Female Law Practitioners Act 1911* (SA)
¹³ *The Women’s Legal Status Act 1918* (NSW)
¹⁴ *Women’s Legal Status Act 1923* (WA)

So, how far have we come?

Over the past decade, there has been a significant and noticeable change in society’s attitude towards women, and in particular, the economic importance of women in the workplace.

The gender pay gap has declined to the lowest point in history. However, the disparity does persist. The average total remuneration gender pay gap for 2022/2023 was 21.7% in favour of men.¹⁵

The gender pay gap measures how we value the contribution of men and women in the workforce.¹⁶ The ABC reported that in the latest gender pay gap report, which was released by the Workplace Gender Equality Agency on 27 February 2024, a woman is paid, on average, \$18,000 less than a man over a year.¹⁷ This demonstrates that women are taking up lower-paid roles.

The results from the gender pay gap report correlate with the *National Strategy to Achieve Gender Equality – Discussion Paper* published by the Australian Government, which states that Women remain under-represented in all key decision-making roles across almost all industries in the Australian workforce. Women only comprise 22.3% of CEOs, 35.1% of key management positions, 34% of board members and 18% of board chairs.¹⁸ The Discussion Paper also provides that inequitable labour market and household dynamics have resulted in a superannuation gap of around 23% at retirement age.¹⁹

Women in parliament also remain significantly unrepresented. Federally, the number of women parliamentarians as a share of total filled seats (lower/single house of parliament) is 39.1% in 2023 (albeit

¹⁵ Reuters, “Australia’s gender pay gap report shows men earner 22% more”, by Renju Jose, 27 February 2024

¹⁶ Australian Government, Workplace Gender Equality Agency, <https://www.wgea.gov.au/the-gender-pay-gap>

¹⁷ ABC News, “Gender pay gap prompts difficult workplace conversations as businesses and employees seek out solutions” by Bronwyn Herbert <https://www.abc.net.au/news/2024-02-28/gender-pay-gap-workplace-business-employment-solutions/103516562>

¹⁸ The National Strategy to Achieve Gender Equality – Discussion Paper published by the Australian Government - https://www.pmc.gov.au/sites/default/files/resource/download/national-strategy-gender-equality-discussion-paper_0.pdf

¹⁹ The National Strategy to Achieve Gender Equality – Discussion Paper published by the Australian Government, page 35, https://www.pmc.gov.au/sites/default/files/resource/download/national-strategy-gender-equality-discussion-paper_0.pdf

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this is an improvement from 25.3% in 2002).²⁰

As for the legal profession, positive steps are certainly being taken as women are becoming increasingly prevalent in the profession. Since 2016, women have out-represented men across Australia in the legal profession. In recent times, law firms have been leading the way in introducing and improving parental leave policies and promoting more women into senior leadership roles. These are all encouraging signs.

However, despite this, women continue to endure discrimination, with women more likely to face the “motherhood penalty” than their male counterparts. *The 2022 Annual Profile of Solicitors in NSW* provides that, overall, male solicitors have been admitted in NSW for longer than female solicitors. This is consistent with the indicators that women are leaving the profession early and not taking up senior leadership roles. Females only comprise approximately 25% to 30% of the Bar Associations in Australia.²¹

As a woman, I am acutely aware of the human rights and opportunities that were forged by my predecessors. I am also conscious of the role held by all Australian women in continuing the movement and advancing the rights of Australian women to be equal to Australian men. More work needs to be done to continue to reduce gender disparity and to ensure that men and women are treated equally in all aspects of civilisation. As Abigail Scott Duniway, suffragist 1834-1915, once said:

“The young women of today, free to study, to speak, to write, to choose their occupation, should remember that every inch of this freedom was bought for them at a great price. It is for them to show their gratitude by helping onward the reforms of their own times, by spreading the light

²⁰ Commonwealth parliamentary library (2023) ‘Gender composition in Australian parliaments by party and chamber: As at 1 May 2023’, [Gender composition of Australian parliaments by party: a quick guide](#), accessed 3 July 2023; (OECD) Organisation for Economic Co-operation and Development, (2023) [Women in politics \(indicator\)](#), accessed 10 July 2023.

²¹ <https://www.afr.com/companies/professional-services/women-reach-an-important-milestone-in-legal-profession-20230503-p5d5an>

of freedom and of truth still wider. The debt that each generation owes to the past it must pay to the future.”

I cherish the role I have earned in my profession, and like so many other female leaders in business, I’m honoured to continue leading the change started by my predecessors, so future generations, like my daughter’s, will be able to enjoy greater diversity and equality.



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