

# Public Discourse and the Power of Women\*

*Moira Rayner*

First let me acknowledge that we meet on country traditionally owned by the Aboriginal people, and the elders who are the custodians of that land today.

## **Women in focus?**

I'm going to talk about the way we deal in public discourse with the 'power' of women. I do so as a feminist and a lawyer and a woman who has occupied statutory offices which carry 'power'—or at least the perception of power—including chairing the Law Reform Commission in Western Australia in the late 1980s, Equal Opportunity Commissioner in Victoria and WA and as a hearings Commissioner of the Human Rights and Equal Opportunity Commission. Currently—temporarily!—I am a Commissioner of the soon-to-be abolished Anti-Corruption Commission in Western Australia.

Power is a term women tend to avoid using, but as Joan Kirner and I wrote in 1999 in our co-authored *Women's Power Handbook*,<sup>1</sup> power is a public good that does not belong only to men, or only to institutions and groups that enjoy its privilege and comfort. Having power is about setting your own agenda, not reacting or responding to or resisting that of others. In the process of writing that book we came to be friends—though she was Premier for the first two years of my term as Victoria's Commissioner for Equal Opportunity, I had met with her only once—and came to a

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<sup>1</sup> Joan Kirner and Moira Rayner, *The Women's Power Handbook*, Ringwood, Vic., Penguin, 1999.

shared understanding about what ‘power’ means for women. Even today when our lives have changed so much for the better, everyone has some power to make choices about their own lives. Though it cannot be bought and may have to be fought for, it does have to be claimed.

Like Joan, I use the term ‘feminist’ without embarrassment or apology. Of the many definitions of ‘feminist’ I like best that which emphasises the different life experiences that women have, the fact that societal attitudes and assumptions have historically put women’s needs, hopes and plans second to somebody else’s, and that if we want to make a difference in our own lives and for those we care about, we have to work for the betterment of other lives than our own, our own families and children, and our own network of friends. It means making our own decisions, listening to other women, as well as acting on our own feelings, and understanding what Mary Robinson, formerly President of Ireland and later the UN Commissioner for Human Rights, called the ‘small print of people’s lives’: taking action as a group to improve the quality of all women’s lives, and those of all of us. We agreed power has to be both shared and used, and that women tend to use it, through networks and negotiations and persuasion, for win-win and ultimately beneficial purposes: a society that all of its members find worth living in, and indeed, fighting for.

When Freud wrote, ‘The great question that has never been answered and which I have not yet been able to answer, despite my thirty years of research into the feminine soul, is “What does a woman want?”’ he said it all, really. Any woman could have told him, if he had asked—and listened to—her. We want to become what we potentially are, to develop our full human personalities. Freud couldn’t see it because he could not see the world through a woman’s eyes. He was as much a prisoner of his own blindness as women of his time and ours are of their public invisibility.

Joan Kirner was the only child of working class parents who became a ‘politician’ after discovering that her first child was expected to learn in a class of more than 50 children, in a school that was expected by government to raise its own funds for the very basic requirement for a good education: a library. She became active in Victorian Mothers’ Clubs—as they were then called—and became part of a national movement for parent participation in education and the centrality of inclusive schools for equitable outcomes for all children.

What is truly remarkable is her journey from community to parliamentary politics. Joan Kirner was a remarkably effective Minister for Conservation, Forests and Lands, but came to national prominence when, in 1990, she became the first woman premier of Victoria, a so-called ‘poisoned chalice’ from which she drank in full knowledge of its toxins. The extraordinary public campaign of denigration and personal attack which began then has been perpetuated among the ignorant though she continued a successful post-Parliamentary career, developing post-secondary education and training, and in her own political party working to ensure that set achievable targets for the equitable representation of women in parliament by selecting good candidates for winnable parliamentary seats.

Her championship of women in parliamentary politics, including speaking for a national network of women, EMILY's List,<sup>2</sup> which raises funds, mentors and supports ALP women candidates in their campaigns, has contributed to an explosion of women in parliament and as holders of real power including the first indigenous woman in a state parliament—Carol Martin, in Western Australia—and the first woman to head government in the Northern Territory, Clare Martin.

I am writing Joan Kirner's biography for Hodder Headline, which has meant talking with people who have worked with—and fought against and criticised—her work. It is a surprising story. It is worth writing, not only because of the effect she has had as one of two women premiers in Australia (the other of course is Carmen Lawrence) on young women's confidence to believe that they can succeed, and should, in political life, but also, I believe, to record the facts and set them against the myth. One brief period of vilification and a single, albeit brilliant, series of election campaign ads—the 'Guilty Party' campaign—has been allowed to rewrite history. It is time to set that record straight. It is important to remember that virtually all political careers end in the 'disgrace' of electoral defeat. It is the fate of all administrations to fall and make way for new governments and new policies, and new failures, as Jeff Kennett knows now.

It should not be assumed that I am a surrogate Anne Summers, a significant political activist in her own right in public life who has contributed to impressive achievements for Australian women, whose depressing recent book, *The End of Equality—Work, Babies and Women's Choices in 21st Century Australia*,<sup>3</sup> documents the fragility of such achievements, and the eagerness of the river of public policy to resume its accustomed course, privatizing, containing and diminishing the lives and aspirations of women in Australia. I, too, am a disappointed idealist. But as a lawyer and democrat—small 'D'—I have faith in the wisdom of the people.

I have focused on 'public discourse' about women and power, because as a democrat I believe in freedom of speech and expression, which protects and promotes conversations among people and with their government about the things that matter. These conversations are the most efficient way of sharing information, agreements on common problems and aims, and reinforcing important values.

I also know, as an advocate of the human rights of people who are excluded from those conversations because they are unpopular, or 'different', what the rule of law requires. But as a woman I acknowledge that public speech may have the effect of silencing some voices and—particularly for Muslim and 'Middle Eastern' women—driving some back into the relative safety, and isolation, of their homes, and out of the community.

I believe there is a need for ethical constraints on some speech, and a role for government to protect the very principle itself: through laws—against racial or religious or sexuality vilification, for example, and sexual and disability harassment—but more importantly by taking steps to ensure and provide an avenue, resources,

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<sup>2</sup> A concept developed in the USA. The acronym refers to 'Early Money is Like Yeast'.

<sup>3</sup> Milson's Point, NSW, Random House, 2003.

support and the opportunity for the targets themselves to contradict lies and to ‘speak back’, to counteract the disabling, silencing, marginalising and disempowering effect of vilification. This should increase their own confidence, competence and participation in the community. That is the true meaning of freedom of speech and expression. It also sends a powerful message about the value Australia places on refusing to tolerate or embrace discrimination.

Free speech must not incite violence or intimidation or hatred because of membership of a social class; it must not take away from those criticised the capacity to reply effectively, especially if they are already members of a vulnerable and marginalised group; and they must not be deprived of, and if necessary should be given, the opportunity to put their position equally effectively.

I will focus on two different aspects of women’s experience of power in this community. First, the way we portray and talk about women who take formal political office and its effect on their use of power, and second, the invisibility of women who have none at all, to whom we owe a great responsibility: women who seek asylum in Australia.

Very recently I launched a report, *The Invisible Women*<sup>4</sup>, by Amnesty Australia, Feminist Lawyers and the Women’s Rights Alliance Network of Australia, which has conducted the first research to demonstrate how utterly our public institutions—government, media and the law—have failed to perceive the political nature of gender-based persecution of women and girls: the invisible cohort of that most publicly vilified group, people seeking asylum in Australia.

### **Snapshot**

When Carmen Lawrence became the first popularly-elected president of the ALP, the response in her home State, Western Australia, was telling. The local newspaper published a long article penned by former (deposed) Premier of the state, Peter Dowding, that her election risked further division in their already divided Labor Party, and that her ‘behaviour’—a term used mostly of dissident children—in resigning from the front bench over the party’s immigration policy—was ‘inconsistent and destructive’.<sup>5</sup> The *West Australian* saw her election as a reproof and further attack on Simon Crean, Opposition leader, and published alongside its editorial a cartoon which was familiar to those of us who watched the media’s attacks on Joan Kirner during her 1990–92 term as Victorian Premier. The ‘Presidential march-past’ showed a dumpy, middle-aged woman carrying a fringed banner, ‘Restoring Traditional Values,’ followed by a straggling procession of followers chanting ‘What do we want? Dunno. When do we want it? NOW!’ she is instructing a dim-looking chap in a reversed baseball cap to ‘take down that man’s name, we’ll deal with him after the revolution!’ In the sour-faced crowd, including Crean, Beazley and the ALP’s foreign affairs spokesman, Latham is crossly shouting, ‘Traditional values, Ha! In opposition forever, you mean.’ And yes, the President has a dowdy black haircut, is throwing off

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<sup>4</sup> Stephanie Cauchi, Mary-Jane Ierodionou and Angela Perry, *The Invisible Women: a Report on Gender-based Persecution Claims by Women Asylum Seekers in Australia*, Cauchi, Ierodionou & Perry, 2003.

<sup>5</sup> ‘Disunity flags slow death for Lawrence and ALP’, *West Australian*, 15 November 2003.

beads of perspiration and is wearing—yes—a polka-dot dress. The message is clear: ‘this hausfrau is not fit to run a government.’

For the first six months of Joan Kirner’s premiership, Jeff Hook, a *Herald Sun* cartoonist, repeatedly showed her as a harassed housewife wearing a spotted dress—Kirner has never owned or worn polka-dots. When she fronted Hook about it, Joan Kirner said he told her that: ‘I know how to draw Henry Bolte, and I know how to draw Bob Hawke, or John Cain or Paul Keating, but I’ve never had to draw a woman in power before and I don’t know how to draw you.’<sup>6</sup> She saw it, at once, as a personal attack aimed at undermining her power in the most effective way—and consciously got on with her work and even turned it to her own advantage, politically, by running a fund-raising ‘Spot on Joan’ concert—and reclaimed her confidence.

But this kind of attack is not limited to Labor politicians. The formidable Liberal senator, Amanda Vanstone, is regularly denigrated as a fat woman—and in an especially objectionable way, not long after she was caught out, as Minister for Immigration, bending the truth over the asylum claims of Kurdish men who landed on Melville Island, retrospectively excised from Australia’s ‘immigration zone’. On 18 November, Crikey.com, one of whose regular political commentators nicknamed Vanstone The Incredible Bulk, commented that:

Not since Joan Kirner was Premier of Victoria has a woman been so roughly treated by Australia’s cartoonists and, like Kirner, the feature being exaggerated for Vanstone is her weight. ... [T]he most outrageous cartoon was David Rowe’s effort in the Weekend Fin ... Rowe portrayed an oversized Vanstone with a grossly fleshy neck disappearing into a pink patterned shirt straining at its buttons as she stares out like a stunned mullet. Meanwhile, a number a mini-men in blue suits (representing the PM, the People Smuggling Taskforce and others) hide behind the great expanse that is her skirt.

These kinds of attacks have an insidious, long-lasting effect on women in public and political life—and on all women. It is lazy, and easy, to make fun of women using language and allusions that are not applied to men, focusing on physical revulsion and sexual allusions—and that do not have the same effect on men as personal attacks on women do.

Women do not usually feature as the first item on TV news bulletins, and when they do it is often in derogatory terms. Pauline Hanson, most recently spectacularly released from prison by the full bench of the Queensland Supreme Court on appeal from her fraud conviction and two-year jail sentence, was not mourned after her brief media flirtation, ‘red-haired’, slender and well-dressed. It was hardly noticed that her views had become government policy. Commentators took the opportunity of her release to criticise the women who had been associated with her conviction—the woman DPP who had conducted the prosecution found on appeal to be fundamentally flawed; the woman Supreme Court judge who had initially found, long before, that her claim for funding for her political party was ‘fraudulent’, and the woman judge

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<sup>6</sup> Joan Kirner and Moira Rayner, op. cit, p. 95–96.

who had convicted and jailed her—with gratuitous criticisms from the legal profession on the ‘poor quality’ of women in high legal office. There was more than a spectre, too, of jailed former Chief Magistrate, Di Fingleton, imprisoned for interference with a witness, again in Queensland, for attempting to discipline one of her magistrates.

The women who are approved are those who have relative youth, good looks, grooming and charm—Princess Diana, nice wives of political leaders, tireless voluntary workers for charity—qualities possessed by remarkably few men in positions of power, who are never described or portrayed as ‘gaunt’, rumped, or overweight, and therefore politically and administratively incompetent objects of ridicule.

### **A common cause for women in politics**

There are five common and effective techniques for undermining women and shutting them out and up in decision-making forums. Because of their historical disadvantage, women and other outsiders’ and parvenus’ hold on power is much less sure than men’s and more easily pried off. These are:

- making women invisible;
- making women ridiculous;
- keeping women ignorant and withholding information;
- making women feel inadequate; and
- encouraging their peers to betray them—what Joan and I called, in *The Women’s Power Handbook* ‘training Judas sheep’—the sheep that trots up the gangplank of an abattoir or live sheep transport, to encourage their peers to follow and meet their fate, while they are privileged by their own execution being delayed. It is only ever delayed.

It is necessary for all women to nullify the harm these little tricks do, to outsiders. This is not a party-specific issue: it is a matter of ethics. The women who entered the Victorian Parliament in such great numbers in 1982 with Joan Kirner made common cause with other women MPs in dealing with the bullying treatment that some of the ‘shellback’ men gave women in the House—the ‘bear pit’—whatever their political affiliations. An attack on one woman was identified as an attack on all women in the House.

So, too, it seems obvious to me that the belittling of women in political life should be seen as an attack on women’s political voice and presence. Deafness to women’s contributions in public debate, joining in sexist derision of other women, and permitting women to be frozen out are all profoundly undemocratic attacks on the equal participation of all women.

I am not arguing that ‘women’—as a group—necessarily use power differently in political life—I do not expect the cut and thrust of political debate to become a ballet merely because the opponent is a woman—but that the exercise of power by women in a masculine environment is very different from that of the men.

In 2002 I wrote a lecture, given around Australia, in the series established to record the achievements of Clare Burton, called *A Pound of Flesh*—an unsubtle reference to the price that women pay for entering the hostile environment of public political life.<sup>7</sup>

It was the start of my exploration of the big question: whether there are women with political power who use it in ‘womanly’ ways—whatever that means (Jeff Kennett at one point suggested that Joan Kirner was too ‘soft’ to run Victoria, which seems a profound misreading of this resilient and resourceful communicator)—and if there are, whether it made any difference to the political climate and decisions benefiting women.

It may be useful to summarise what I suggested then in relation to five issues:

- **Whether a ‘critical mass’ of women—either in large numbers or particular proportions relative to men—makes a real difference to the way political decisions are made or power is used.**

I came to the provisional position that politically active women do not necessarily become different kinds of political leaders than men and that much depended on how they got their power. Many women political leaders in countries in South America, Asia and India were parachuted in because of their position in powerful male relationships—dynastic families and marriages and established classes.

If it was as a result of family connections, the women appear more likely to model the attitudes and practices of the dominant political paradigm. Margaret Thatcher—the ‘Iron Lady’—is one example, and India’s Prime Minister, Mrs Gandhi, and Sri Lanka’s President are others. There may be a veneer of ‘difference’—for example, Megawati Sukarno-Putri is ‘motherly’, (though her politics are not!), and Eva Peron’s apparent concern for the poor of Argentina—but this is not necessarily reflected in any challenge to the norms of their political parties, firmly in the hands of the men.

The women who ‘did it differently’—such as Norway’s Prime Minister, Gro Hartland, and also Victoria’s Joan Kirner—were those who rose out of community movements and used the strategies and tactics that those groups used, internally, to function politically, including co-operation, respect for others’ opinions and non-aggression. The way they operated depended on what they wanted to achieve, and whether they had an agenda based on ‘women’s concerns’—that is to say, a set of values based on their life experience as women, and commitment to women.

The ‘critical mass’ is not enough, but it is necessary to change a culture.

- **Whether women politicians bring different values, styles or approaches to the political process.**

This seemed to depend on whether or not they operated, as women tend to do socially, through networks based on the value of women’s friendship. It is

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<sup>7</sup> Published in the *Journal of Feminist Studies*, 2003.

apparently true that these tend to peter out when ‘shared troubles’ are succeeded by success, which changes the relative status between the friends.

In my research for the Kirner biography the value of friendship and disinterested and generous support by women friends was a highlight, and remarkable given that the political process is predicated on competition rather than cooperation. Again, this tended to be obvious where the women had been active in community politics, before their professional political involvement, where trust and cooperation were necessary qualities for success. That style, in Victorian politics in the 1980s and 90s anyway, was avowedly ‘woman-friendly’, powerfully influenced by the women’s perceptions that there was a ‘woman’s viewpoint’ that was different and needed to be talked through; and the personal benefits for them to be supported by other women, rather than powerful men or dynastic structures. They were more likely to remain sensitive to ‘women’s issues’ because they were constantly reinforced.

- **If so, do these values and styles actually result in different—and from women’s point of view, ‘better’—decisions?**

I think it is too soon to say. One fact is clear, though: women active in political life in or out of Parliament will never change a political culture in which they struggle, nor influence political decisions in ways that benefit them as women, unless they are so closely linked with the executive side of government that they cannot be sidelined.

Success in protecting and advancing women’s agendas—issues relevant to women’s lives such as protection from family violence; improvement of oppressive or exploitative conditions of work for women, decent provisions for maternity leave and help with child care and other services supporting working women with children and their right to a family life—depended on an open pipeline between the politicians and the community of interests of women, helping them keep the ‘ethical edge’ that makes women different.

We are yet to see whether, over time, women politicians can keep that ‘ethical edge’ if they have to give too much of it away by the conditions in which they gain pre-selection through men’s networks, political patronage through political or ministerial work, and in which they have to climb to candidacy and status in parliamentary politics through traditional alliances and deals. It can be easily blunted: just ask women lawyers!

- **I also asked whether our recent political women leaders have left a particular legacy, as women, that benefits women.**

It must include but be more than mere examples or role models to other women. The greatest legacy of women politicians lies in structural innovation, as much as their courage and persistence. Individual successes may encourage others to follow: there need to be pathways that make it easier for the next women. Women who want to create change are aware that they need to bring other women along with and after them.



It seems crucial, to me, that building and maintaining links among women without regard for party-political differences leads to the kind of ‘one voice’ among women that, at symbolically important times, can make a very great difference. That is what stymied the Kennett Government’s plans to close down women’s prisons and locate all the inmates in Pentridge men’s prison in 1993, and, as Summers has remarked, has so signally disappointed many women concerned that Coalition women have failed to speak out effectively within their parties on shared concerns to achieve paid maternity leave, and decent treatment for refugees.

The price women pay for political power is very high. I have already touched on women’s curiosity value to the media—and the sexual, sexist and insulting response to women who achieve prominence, such as former Democrat leaders Natasha Stott Despoja, Meg Lees and Cheryl Kernot (how was it that Gareth Evans did not attract the opprobrium she did?). Because they are less secure, women seem more willing to accept blame and feel uncertain about their own political judgements. The price in terms of physical distress and illness, loss of personal friendships and family time is enormous. The ‘rewards’, after politics, for women are less likely to be highly paid consultancies, plum diplomatic posts and appointments to prestigious boards, than for men.

All of our women political leaders have wanted and needed the support and understanding of other ‘outsiders’ in their work. Their successes, I suggest, are most obvious when they consciously accept their power as women, and their need for living relationships with women in the community—their support, constructive criticism, and companionship.

The greatest risk to the power of women is paradoxically when women attain office, and either ‘forget’ what drove them to it, or lose touch with their roots. Worse, if community women come to rely on one party allegiance, when governments change, their ‘links’ and hold on shared power go at the same time. That certainly happened when the Kennett administration swept in at the end of 1992, and the women’s ‘lobbies’ lost their power overnight.

That lesson should be thoroughly learned.

- **Powerless women and women with political power**

Women with political ambitions need to acknowledge that there are inequalities among women—that some women are not strong and competent, that it is not weak to acknowledge it, and that it is necessary to do something to change it. Women politicians’ agenda for change must be bedded into a framework of justice.

The most effective women politicians—in terms of bringing about a better set of policies for women—are those who remain conscious of their personal and shared experience of exclusion or discrimination and with a fellow-feeling for the others ‘on the outer’—men and children and women and the old and the poor and the ‘unlawful non-citizens’ and the prisoners and the mentally ill—for whom systemic change is required.

This brings me to my second major issue: how Australian women should expect their political representatives to use their power to improve the status and treatment of the ‘invisible women’, whose lives are ruined by discrimination and oppressive social and government practices, and who look to us for protection.

I launched a report on gender-based persecution claims by women asylum-seekers in Australia at the Law School at Melbourne University on 12 November, researched and written by three remarkably talented young women—Stephanie Cauchi, Mary-Jane Ierodionou and Angela Perry, supported by a consortium of voluntary groups concerned with the rights of these women: Feminist Lawyers, the Women’s Rights Action Network Australia and Amnesty International Australia.<sup>8</sup>

Each year a small number of women seek asylum in Australia by making claims for refugee status on the basis that they have been subjected to gender-based persecution.

These include claims of rape, domestic violence, female genital mutilation, sexual slavery and trafficking, forced abortions or infanticide, forced marriages and ‘honour’ killings (a disgusting term in itself to describe the murder of women who have breached masculine norms of behaviour). Some persecution is peculiar to women or impacts disproportionately upon women, being crimes perpetrated only on women because of their sex, or because defiance of social mores has violent implications for them.

This report documents that, for the most part, such women cannot successfully claim refugee status on this ground in Australia.

This report analysed publicly available decisions of the Refugee Review Tribunal (RRT) over an 18-month period to 30 June 2000 and interviewed key stakeholders in depth—such women refugee applicants as could be found, refugee lawyers and academics—and reviewed the relevant research literature and case reviews.

The Refugee Convention provides that Australia must not expel or return a refugee to a place ‘where his life or freedom would be threatened on account of his race, religion, nationality, *membership of a particular social group* or political opinion’. Australia has ratified this as it has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the United Nations Convention on the Rights of the Child (UNCRC) which prohibits arbitrary deprivation of a child’s liberty and states that detention shall be a measure of last resort and for the shortest period of time (in breach of this obligation Australia has detained 98 children in detention with about another 90 detained offshore).

In 2002, the High Court decided in *Khawar*<sup>9</sup> that, as a matter of law, women in Pakistan may be capable of constituting a ‘particular social group’ within the meaning of the Convention. This was an unpopular finding for the then Immigration Minister

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<sup>8</sup> *The Invisible Women*, op.cit.

<sup>9</sup> *Minister for Immigration and Multicultural Affairs v Khawar & Ors* (S128/2001).

who dismissed the possibility that flight from domestic violence should be or even could be cause for a protection claim.

In that case a Pakistani woman sought asylum because she said she was the victim or survivor of domestic violence perpetrated by her husband and members of his family, which the state (police) had refused to protect her from, though there were laws against family violence. The case was followed in a later case in 2002 called *SBBK*, which dealt with a woman's claim to protection for herself and her son, who were victims of their husband's or father's violence in Iran.<sup>10</sup>

The trouble with this finding, to Australian decision-makers, is that it is still considered, in spite of the Australian evidence to the contrary, that violence to women is of a private, non-Refugee Convention, ground. They have routinely argued that persecution must be by the state—and harm against women was typically classified as 'private harm'—though the complicity of the state which either does not make such harm unlawful or will not prevent or punish such harms may be demonstrable.

The case was decided before our migration legislation was amended and devised to limit the grounds on which applications may be made. The 2001 amendments narrow the grounds (further than the Refugee Convention grounds) so that each of the following conditions must be satisfied:

- the reason for the asylum claim is the essential and significant reason for the persecution,
- the persecution involves serious harm to the person, and involves systemic and discriminatory conduct (Section 91R)

Serious harm is defined as a threat to the person's life or liberty, significant physical harassment of that person, or significant physical ill treatment, or significant economic hardship or denial of basic services or capacity to earn a livelihood that threatens the person's capacity to subsist.

The *Invisible Women* report documents the experience of refugee lawyers and migration agents as saying some types of persecution were more 'credible' than others—female genital mutilation, for example, in contrast with sexual trafficking and domestic violence, which are overwhelmingly seen as 'private' wrongs, even when they are perpetrated by state actors. Claims for protection arising from rape and sexual assault, for example, tended to turn on whether a woman is raped for an 'acceptable reason' such as her family convictions. One case mentioned to the researchers was a refusal of an application for protection by a ten-year-old rape victim, a minority community member from Iran—the RRT accepted the rape had occurred but said it was not for a Convention reason despite evidence that other girls of the same group had also been raped.

I will look at the reason why such decisions might be made in terms of the failure to ensure that decision-makers understand and apply the department of Immigration, Multicultural and Indigenous Affairs' (DIMIA) gender guidelines, shortly.

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<sup>10</sup> *SBBK v Minister for Immigration, Multicultural and Indigenous Affairs* [2002] FCA 565.

The Migration Act also specially requires decision-makers to take into account the ‘credibility, manner and demeanour’ of applicants.

This is not a rule, but rather an invitation to exercise an unexaminable discretion. Often, the report finds, applicant women were found not credible because they didn’t mention their gender-based reason for flight in the first interview with immigration authorities. Yet there are many reasons why these claims would not be made, from the practices of officers themselves—when groups arrive, the woman’s claims may not be sought, and their right to protection is bundled in with the dominant male.

Women asylum-seekers are unlikely to be aware of the importance of their claims if they haven’t had good legal advice, and are unlikely to make these claims in front of male interpreters or even male relatives, because of social taboos. If they have been subjected to sexual violence they may be traumatised and unable to speak either at the border, or in later interviews.

Their credibility is also affected by the Tribunal’s preferred reliance on country information—for example, in one case a Somali woman’s claim was rejected because it was claimed that ‘Somalia’—which has no effective government—can and does protect girl children from female genital mutilation, and the mother’s refusal to go back for fear her daughter would be subject to it, was not grounds to stay.

Another problem simply arises from the nature of ‘discretionary’ assessments. Discretions are always exercised on the basis of a person’s value judgements. In one reported instance a member of the RRT left a hearing because the complainant could not stop sobbing, saying he would return when she had contained herself. There were many others where the women were unable to speak in front of a man, or to express themselves in the frightening environment of a Tribunal hearing. They were seen as dishonest or unreliable witnesses. In another reported case, a woman who said she had been raped by state officials and was also sexually harassed severely at work had her claim dismissed by a male Tribunal member who said that sexual harassment was merely irritating behaviour.

It is not known how many of the 9943 protection applications lodged in Australia—27 per cent were lodged by a female primary applicant—and 8488 decisions rejected on review were from women with gender-based persecution claims, because our government does not keep comprehensive statistics. We do not know how many women were not able to make their claims at all and were rejected on entry—only those who appealed against a refused claim. The only data that we have is of those few recorded Tribunal decisions that have been published. The Tribunal does not keep records, either, of the nature of those claims, or trends in decisions.

We simply know that most of the women’s claims of sex-specific, gender-related discrimination do not succeed at Tribunal level, and that there is evidence that Tribunal decisions are inconsistent and unlikely to create confidence in a just outcome for women.

In summary, the researchers have recommended substantial changes to the practice of DIMIA, its agents and the Tribunal to address the findings that:

- The Tribunal was unlikely to accept that women who experience gender-based persecution constituted a social group as required under the definition of a refugee in the Refugee Convention—though the High Court and the Gender Guidelines recognise it.
- In the process of applying for refugee status, the credibility of women applicants was often undermined because women did not make full disclosure of the facts of their case in the initial stages of their application. The research suggests that for the most part this occurred because women were ashamed or embarrassed by the facts they later relied on, or because of inadequate procedures on the part of the Australian government, which made them fearful of the consequences of full disclosure.
- In the decisions studied, the inconsistent practices of tribunals seeking to distinguish between sexual abuse and other gender-based misconduct perpetrated by ‘state actors’ and those perpetrated by non-state actors in the ‘private realm’—without protection of law or justice systems—hampered the success of claims of gender-based persecution.
- Women applicants from countries geographically close to Australia generally had greater difficulty proving their claims—which implies that factors other than the merits of particular cases might be in operation, including pressure of particular waves of migration.
- Based on the interviews, where the RRT found in favour of a woman claiming protection on the ground of gender-based persecution, DIMIA routinely appealed to the Federal Court. Such appeals can take up to three years or more to be heard, and the woman and her children may be held in detention for the entire period.
- Most concerning, DIMIA has gender guidelines, but there is a failure to apply the guidelines in a consistent manner. They are not published in its information sheets or on the internet. They do not appear to be necessarily taken into account by officials or by Tribunal members, though they have been in the Federal Court.

It is disconcerting that such Guidelines are not prominent. They expressly state that:

It should be accepted that gender can influence or dictate the type of persecution or harm suffered and the reasons for this treatment. Even where gender is not the central issue, giving conscious consideration to gender-related aspects of a case will assist decision-makers to understand the totality of the environment from which an applicant claims a fear of persecution or abuse of their human rights.

The guidelines advise decision-makers to have regard to ‘the general human rights record of the country of origin, and the experiences of other women in a similar situation’ which might reveal systemic persecution for a Convention reason, and

emphasise the need for skilful and sensitive interviewing and understanding of torture and trauma's psychological effects—and the fact that women may not raise sexual assault matters due to trauma and cultural and social taboos. Those interviewed told many stories of incapacity to tell the women's stories, and be heard, because of inadequate conditions in which the interviews were held.

These Guidelines clearly envisage that women are capable of being members of a particular social group defined by their gender and possibly other characteristics, for the purposes of the Refugee Convention. That is not, in general, the DIMIA approach.

Unless they are applied, a personal predisposition to disbelieve rape claims means that a woman's 'credibility' can lead to refusal of protection. As one commentator has remarked sardonically:

Beating a man is obviously a form of persecution: raping a woman is not. Ethnically motivated attacks on men coupled with State indifference are race persecution—sexual or domestic abuse of women with similar indifference isn't!

Only around 27 per cent of Australian asylum-seekers were women for the period covered by this report, though on average 51 per cent of people of concern could be assumed to be women and girls. Women and children are in fact much more likely to be people of concern and refugees, but also much less likely to be able to get a place where they can seek protection from persecution because of their economic, social and physical frailties.

It seems from this report that our system of review of refugee claims is not tailored to ensure that the experience of women, as women, is properly taken into account. It has not seemed important enough.

This is an injustice, and it ought to be an issue for women in political life.

## **Conclusion**

Educated, confident, salaried and politically informed and active women in Australia have a fair idea about power and how to claim it—though I do not claim they are equal. But these women have to do something about the powerlessness of women who have less chance of surviving and living a decent life than the men who get here.

Sex discrimination against women is rife in every nation, including our own, particularly against women from racial and cultural and ethnic minorities, and not just within those cultures. It is not men who discriminate against women—it is privileged groups that discriminate against unpopular, different minorities.

It would be a tremendously important symbolic act for those concerned with the rights of women in Australia to act together to insist that we act fairly to all women, by making their voices heard, whatever their national or ethnic or cultural origin, and however they came here.

There is no sensible way to talk about the rights of women, and the distribution of personal power, and feminism, without acknowledging that respect for human rights means advocacy for those who cannot and will never vote at all. As Geoffrey Robertson wrote in his book, *Crimes Against Humanity*<sup>11</sup>:

The idea that people, wherever in the world they happen to be, possess a few basic rights that no political order can take away, has had a momentous impact on modern civilisation.

I have tried to persuade you to see the connections between powerful and powerless women in a world in which men's attitudes have designed the networks of influence. Even politically powerful women find themselves diminished, undermined, trivialised and attacked in public discourse, just because of their gender.

Assumptions are made about what is 'proper' in a woman, somewhat along the continuum but in very similar terms to women without power. There is an ongoing, clear message that even clever, educated and powerful women are less credible than men and that their 'behaviour' is evaluated differently and in a discriminatory way. There is an ongoing preference to contain women's concerns to their primary role in 'family' structures, without a correlative understanding that in some circumstances, private oppression without State protection can be persecution because the women are members of a persecuted social group.

For both educated, competent and wealthy women and those who rely entirely on the compassion of others, lip service to gender equity is still our experience. In the case of political women, while they are expected to 'get there' without 'special privileges' using existing networks of influence, male-dominated, they may find themselves in practice excluded from equal considerations. Rules, such as affirmative action targets for women in political parties, assessment of claims—whether to employment or protection—being treated on merit and taking into account gender-specific vulnerabilities and disadvantages, may be ignored with impunity. Gender guidelines by DIMIA are neither monitored nor even publicized. Discretionary judgements are assumed to be neutral judgements, when our experience of equal opportunity laws and programs is that they simply cannot be. There is an overall unwillingness to acknowledge the unique nature of women's experience for the most hopeless—and the legitimacy of the claims of women in greatest need.

We have hard evidence that women's complaints about sexual crimes have until very recent times been assumed to be unreliable, because they are women. We should note with alarm that the rate of sexual assaults on women continues to climb, even in this country, while the rate of successful prosecutions continues to drop, despite this knowledge. Knowing this, we should be able to do something about those who do not even enjoy the protection of the rule of law, let alone formal legal equality.

We owe it to all women to protect the vulnerable by ensuring that women's experiences are valued and that our administrative and justice systems allow them to be seen, voiced and taken seriously.

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<sup>11</sup> London, Allen Lane, 1999.

Women who have succeeded in political life have an understanding of the lives of ordinary women, value and respect those experiences, and engage constantly in dialogue with those women, form and maintain relationships of friendship and support with women in the community, and use their networks, trust, cooperation and support to succeed in a hostile environment, including across formal political divides. We cannot succeed by becoming ‘honorary blokes’—a club of which we can only ever be associate members. We must change the culture, and the rules. Inclusivity is not a gold pass for the privileged. Women, as participants in ‘outsider politics’ must bring the other outsiders, in.

If we cannot do this by seeking justice for the desperate women, whatever our party lines, what moral claim do we have to be taken seriously in the Senate?



**Question** — It is with some trepidation that I raise the suggestion that you are perhaps a little bit sensitive on the subject of political cartoons and the way Joan Kirner and Amanda Vanstone are portrayed. If you look at the history of Australian cartoons over the past century, from Billy Hughes onwards, you will find that the cartoonists have been merciless and savage in the ways they portrayed the various prime ministers and other politicians. Don’t you agree that being the subject of political cartoons is just part of the job?

**Moira Rayner** — I believe that being subject to attack is a necessary element of political life. I was making the point, not that cartoonists should reign in their wit, but that they are *witless*—boring, lazy and stupid in attacking women politicians because of their appearance, their dress and their presumed sexual activity, which they don’t do to the blokes. I am saying it is different, and that they use a different approach, particularly in the examples of Kirner, Vanstone and Lawrence. They took a similarly different approach to Meg Lees, Natasha Stott Despoja and Cheryl Kernot. If you look at it objectively—which I have sought to do—they have taken a lazy and often not funny way of diminishing the seriousness with which we should take apparently powerful women, which is different to the way they treat men.

The other thing we must take into consideration is the relatively recent entry of women into politics and the way in which they are often judged in terms of appearance and their ‘proper’ behaviour in a society which isn’t very forgiving for deviants from norms—it’s not nearly as bad as some other countries, of course. As Joan said, when you are attacked on the basis that you are a fat, frazzled housewife wearing a polka-dot dress repeatedly on a daily basis—and she actually was assailed on a daily basis in this way—it actually does, because of your background, have an effect that it wouldn’t have on men. And the result is that it makes you doubt whether you are a sane and sensible sort of person, and therefore competent.

I think my major attack is against the cartoonists that do as Alston did in *The West Australian* to Carmen Lawrence, simply stereotype our female politicians as a polka-



dot dress with lumps. They are not being funny, they are not being satirical, they are merely hopping on the bandwagon with a bunch of other chaps not thinking very hard. Therefore they are not good cartoonists.

There it is an element of public discourse that has a knock-on effect. A lot of people who don't know Joan Kirner, have asked me: 'Why does she wear a polka-dot dress?' I can assure you she has never bloody owned one. And if you go back in history, you will also see from some of the early cartoons of the women suffragists that they were also portrayed as wearing voluminous dresses with polka-dots. It was a trivialising, child-like thing: 'These are not real people, and are not to be taken seriously. They are pretending to be serious, like children.'

Similarly, Peter Dowding, when he writes about Carmen Lawrence, talks about 'her behaviour'. Her behaviour? She chose, as a matter of principle, to resign from the front bench of the Labor Party. Well good on her. I hardly think that was a child-like thing to do. But they use the language of children—'discipline', 'inferiority'. And the depictions of it I are damaging and send a very bad message to other women and other outsiders that they will be ridiculed out of the place. Ridicule is a damned good way of shutting women up. I have seen a lot of women leave committees, for example, because they have been laughed at or other women have been laughed at, and I have been subjected to that sort of nonsense myself, actually, during the Constitutional Convention—not on camera, they wouldn't do that on camera. That sort of sexual allusion and references to personal appearance are designed to make you feel humiliated, and therefore quiet. So, go for it—but be clever about your commentary in cartoons.

**Question** — That is the same situation as when Rosemary Follett was made Chief Minister, and she was shown curtsying in the *Canberra Times*.

**Moira Rayner** — As you say, she was depicted as Chief Minister curtsying. And a polka-dot dress? Too right. I would like to see a cartoonist regularly depict on a constant basis men wearing sporrans, for example. It's equally valid. But they would have to be small sporrans. But they wouldn't do it. That's the difference—you can laugh at a fat woman, but you can't laugh at a man because of the size of his genitalia. One is acceptable, the other is offensive. And that's my point.

**Question** — For at least a hundred years Australian cartoonists have been depicting the terrible consequences of women having any political power, one of which is that the man ends up wearing the frilly apron, with his hands in the sink. This is of course a castrating image. So that is another approach which is a lazy approach, and it is a cliché which has been pulled out time and time again over the last hundred years.

Under what conditions can women in politics make a difference and improve the lives of other women, including those who claim refugee status on the basis of gender-based persecution? There is international literature on this issue of critical mass and the conditions under which women can make a difference, and it would concur with your findings that where women come from is very important, for instance whether they have come from community politics, social movements and so on. That is very important, and their networks when they are in parliament are very important.

There are probably a couple of other things equally as important, and one of them is having structures which are mandated to focus on issues of gender equity, whether those structures are within parliamentary parties or within the parliamentary committee system. The existence of those structures which can legitimately focus on issues of gender equity is very important. And of course the other condition which is so important is actually having a strong women's movement outside in the community which provides a political base for women in parliament.

**Moirá Rayner** — I entirely agree. I think the greatest contribution that women politicians make is by establishing systems which will survive their departure, which require a focus on the rights and experiences of an excluded group—namely themselves. Without that, they simply come and, like a bright comet, make a flash on the horizon and then disappear. It is a lonely and ultimately futile experience. It took so long for women to come into parliament in any number, in part because the women who made it early were lone women who were not necessarily members of any particular party. It is not enough, we now realise, to simply want to go and do things for women, you have to have a mandate and an agenda to make any difference.