

Righting the wrongs

DR VIVIAN WALLER'S PASSION FOR SOCIAL JUSTICE HAS SHAPED HER CAREER.

A strong social conscience lies at the heart of Dr Vivian Waller's successful career acting for victims of sexual abuse and pursuing the rights of the vulnerable. Once told she was "not destined for tertiary study",¹ Dr Waller has worked for plaintiffs in several class actions, including Esso's liability for the 1998 Longford gas explosion. She has also brought the Victorian government to account for the abuse of state wards at the Ballarat orphanage. In 2006 the LIV awarded Dr Waller with the Women Lawyers Achievement Award after she led a successful High Court appeal in *Stingel v Clark*.²

Most recently, Dr Waller has challenged the Christian Brothers, after the brother Robert Best was convicted for sexually abusing schoolchildren in his care from 1969 to 1988. Calling for a bipartisan, state-led inquiry into the Catholic Church's response to such acts,³ Dr Waller is tenacious in bringing the powerful to account for their wrongs.

Dr Waller shares her insights and experiences about her legal career, values and views on social justice.

What were your formative influences during articles?

In 1994 I was interviewed for articles [at Slater & Gordon] by Julia Gillard [now Prime Minister] and Bernard Murphy [now a Federal Court judge]. I learned from Peter Gordon, a master strategist, to anticipate what dastardly plans may be hatched by your opponent. From Paul Henderson, I learned a lot about looking for that matrix of facts around which to build a compelling case. From them all, I learned about the intersection of politics and the law. There is

often a great deal of lobbying to be done to try and ensure that the law is, in fact, just.

Can kindness, insight, compassion and courage play a part in a lawyer's career?⁴

It's absolutely essential. At law school, legal subjects filled up my timetable around what I really enjoyed, literature and politics. But ultimately I volunteered as a student at the Monash-Oakleigh Legal Service. It's the first time I realised there was something socially useful to be done with a law degree.

There are two kinds of people in this world: people who just get up and do their job because that's the way the world is, and people who say: "Is that right?" and: "If it's not right, what am I going to do about it?"

Should young lawyers contemplate further study while still practising?

You need to ask yourself what you want to achieve by further study. I don't think that a doctorate necessarily furthers a career. If you have a particular passion that you want to research and write about, then I would recommend it.

What is your particular passion?

With sexual assault matters, it's fairly common for disclosure about sexual assault to be delayed. By this time, the statute of limitations has long since expired, and we'll find crafty defendants asserting that the time has long passed since someone can lawfully commence a civil proceeding.

Is there a disparity between law and justice?

I constantly remind clients never to mistake the law for justice. People often have a very good moral or ethical point that the law doesn't necessarily bear out.

In areas of law where people are very emotionally affected by the case's subject matter, young lawyers will want to reassure clients, tell them good things. But you're actually doing your client a disservice if you are not, in the most compassionate

way possible, telling them exactly how it is rather than falsely raising their expectations. So if you're in for a long, hard fight, you must tell them that, and allow them to choose freely about whether or not they want to take up that fight.

Tips on establishing your own practice?

Having a well-established network, being well-known in the legal community for what you do and excelling in your field is important. Other lawyers who don't do the kind of work you do will want their client in the hands of someone who knows that kind of work quite well.

Is the concept of a typical day a real one in your world?

A typical day is a bit of an anathema to me. I might find myself interviewed on radio, then giving advice on [proposed] terms of reference for an inquiry. In the same day, I might take a call from someone wanting to talk to somebody for the very first time in their life about being assaulted by a Christian Brother when they were in grade three. So it's a fairly busy life.

Where has your interest in the law come from?

It's a passion for social justice, I think. Often the law lags behind social change, in areas like legalising gay marriage. But sometimes the law does lead by example. In Alabama in 1955, Rosa Parks was asked by a bus driver to relinquish her seat to a white passenger. She refused in a completely peaceful and courteous act of civil disobedience. When she asked the police officer arresting her: "Why are you doing this?", he replied, "I don't know, it's the law". The bus driver later said, "I was simply doing my job like I'd done every other day of the year". Rosa's actions sparked sweeping changes to the laws in Alabama that in turn helped the process of social change – by ending racial segregation on buses, and elsewhere.

I often ask students and interns: "Will you be the kind of lawyer that goes to work and says, 'I don't know, it's the law'? Are you



Dr Vivian Waller: Never mistake the law for justice

going to be the bus driver that does your job this way because that's the way it's been done for the last 12 years? Or are you going to be the kind of person, faced with a task to do, asking yourself: 'Is this the right way to go about this? Is this right?'"

You have said that “tending the garden and listening to the counsel of Thelma and Louise, Kath and Kim and Ginger and Maryanne (the chickens) connect me to people and to the earth”. Do you still like Kath & Kim?⁵

I haven't watched *Kath & Kim* in many years, but the point is I've named my chickens after femme fatale heroines. I'm pleased to report that Kath and Kim, Ginger and Maryanne, and Thelma and Louise are alive and well, and their numbers have grown. They have been joined by Edna and Patsy and, more recently, Carrie, Miranda, Charlotte and Samantha. ●

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1. Kinder, Lydia. "Inaugural Australian Women Lawyers Conference 'Celebrating Excellence'" *Themis* 8 (2007): 4.
2. (2006) 226 CLR 442.
3. At the time of writing, Brother Best remains a member of his order.
4. Mitchell, Lisa. "10 Things I Don't Put On My CV: Vivian Waller", *The Age* [Melbourne] 22 Sept. 2007.
5. Mitchell (2007), "[T]ending the garden and listening to the counsel of Thelma and Louise, Kath & Kim, Maryann and Ginger (the chickens) connect me to people and to the earth."

RESUME: DR VIVIAN WALLER

Age	44
Admitted	1995
Currently	2006 – present Principal of Waller Legal, specialising in personal injury compensation for sexual assault and child abuse victims Chair of the Justice Committee, Victorian Women Lawyers
Education	1990 BA (Hons) (Monash) 1992 LL.B (Monash) 2005 SJD (Melbourne) Thesis: <i>Limitation Periods in Child Sexual Assault in Victoria</i>
Milestones	1996 Inaugural CEO, EMILY's List (a provider of financial support and mentoring for progressive women seeking election to Parliament) 2003 Founded Australia's first specialist legal unit for victims of rape and sexual abuse 2005 Voluntarily advised in the re-election campaign for Carol Martin MLA, Australia's first female Indigenous MP 2006 LIV Women Lawyers Achievement Award
Previous career	1990 – 1994 Politics lecturer, Monash University 1994 – 1997 Articled clerk and solicitor, Slater & Gordon 1997 – 2006 Solicitor and senior consultant in medical negligence and product liability, Maurice Blackburn Cashman