

# One year on: Five women silks of 2017 discuss work, confidence and leadership

Gail Furness SC sat down with Lesley Whalan, Melissa Gillies, Naomi Sharp, Katharine Morgan and Ruth Higgins and asked them to reflect on their first year since taking silk. They candidly discuss the selection process, how their practices have changed and what they expect from the years ahead.

## The application process

**What was your experience of applying for silk and, in particular, the requirement to provide a table in respect of all cases, including contested interlocutory applications, in which you have appeared in the previous 18 months?**

**Lesley Whalan:** I found the process fairly onerous, in terms of meeting the requirements under the protocol, but I think it was a really good process in the sense that I was able to reflect on my career at the bar and how I evolved into an applicant for silk. And I think that it was really useful to go back over the work that I had done, the cases that I appeared in, remembering the people that I had worked with, the people that had mentored me. That was all very useful.

**Naomi Sharp:** The process was very time consuming, but it does show the thoroughness with which applicants for silk are vetted. On the upside, it was interesting to reflect in detail about how I had occupied 18 months of my working life and the diverse nature of matters I worked on. One of my colleagues gave me very useful advice in telling me to create the table 18 months out from the time I wished to apply for silk and then periodically update it rather than having a mad rush to prepare the table just before the cut off date for the application.

**Katharine Morgan:** I remember when I did my first draft of the application itself, and gave it to someone, and they said, 'You sound like a hack who's making do.' I think that the discipline of the table really helps. Doing the table and then writing my submission helped me with the different categories in the protocol. You set out each criterion and you work out which of the cases from the table matches the relevant criterion.



**Ruth Higgins:** The introduction of the table of 18 months' practice is such a great initiative. It's objective and democratic and must assist the silk selection committee in assessing relativities of different applicant's practices quickly and fairly. And it's simple to do. You measure out your life in coffee spoons and see whether it stacks up. As for the application letter, I asked two people I trusted for copies of their successful applications, borrowed what I liked, and added some of my own thoughts. I agree with Lesley that the process of setting that all out is emotionally interesting. It is like writing your own report card. I felt on the one hand proud of all my efforts and concerned that they wouldn't be enough. And I felt incredibly grateful to the silks and solicitors who had supported me over the years.

**Melissa Gillies:** Up until the cut off date I was in two minds about whether to apply or not. I found the application process really settled the question for me. I did underestimate the time that the application process would take which in part was a product of grappling with the question of whether I should apply. After days of working on the application I realised that I should apply. Like Ruth it also showed me in a really scientific way where my supports had come from in the past year-and-a-half. It also showed me how I had developed as a practitioner.

**Katharine Morgan:** My first thought was that eighteen months out is too late. You know, I think it's something that is you think that one day it's something that you want, then you will be trying to develop aspects of your practice that you would describe as 'barrister-like' i.e. on your feet, advocating, being strategic in cases.

**Ruth Higgins:** I agree the lead time must be longer than 18 months. It should be a process that refines itself.

**Melissa Gillies:** I also struggle with the idea that it is strategic. It should be organic in the sense that you start to do the harder cases and realise that you are developing to the extent that silk might be on the horizon.

**Katharine Morgan:** Yeah, sure. Exactly. You want to develop a balanced practice.

**Naomi Sharp:** I think Kate is spot on about trying to develop a balanced practice. And that can be tricky at times. I think it is very important to invest in developing your skills by accepting the briefs most likely to develop those skills. For example, cross-examination skills.

**Ruth Higgins:** And also seeking out matters in which you are arguing against a silk and junior, which Commonwealth and State work will often offer you. Although, commercial work does so too.

**Katharine Morgan:** What has changed in the last one or two years is the expectation of written references. I think that is very hard.

**Lesley Whalan:** I got opponents to give me a written reference and a verbal reference, and my second written reference was a solicitor I was working with at the time.

**Naomi Sharp:** I think the references are a very important part of the application process.

**Ruth Higgins:** I asked two senior silks with

whom I had done a great deal of work (and also been against a fair bit) to provide written references and asked another silk and a partner at a law firm to be available for oral references. Each of them could speak in real detail about working with me. That process is humbling: people you greatly respect support you and endorse you and that is, independent of the outcome, quite a lovely thing.

**Katharine Morgan:** One thing with me though, is they put my name, they put 'Katharine Morgan'. Various people told me they didn't know it was me. I basically stood in Phillip Street and Macquarie Street with a megaphone. At the High Court bows Arthur [Moses] announced me as, 'Katharine Morgan, also known as Kate Morgan,'; and the chief justice called me 'Katharine, known as Kate'. So it ended up as being a nice story.

I don't know if you had this, Lesley, but did you ask people before you applied? A few of your crucial silks and colleagues?

**Lesley Whalan:** No.

**Katharine Morgan:** I did. I asked someone whom I had appeared against, in a four-week trial. I thought if anyone's going to have a view, they'll have a view.

**Naomi Sharp:** I did seek guidance from my colleagues about the right time to apply for silk.

**Ruth Higgins:** Me too. I had a little cache of trusted silks and solicitors whom I spoke to for a couple of years before I actually applied. One, whom I won't name, said the most gloriously gnostic thing when I asked him the year before I actually did apply, whether I should apply: 'I trust your judgement completely. You will get it when you apply. But when you apply will be a function of your judgement.' I felt all a little Luke Skywalker in the presence of Yoda and decided to apply the next year. And got it. So he was right.

**Melissa Gillies:** Again as a product of being in two minds about applying I didn't necessarily ask people if I should apply but was gratified that a variety of people simply said to me, 'You are applying this year aren't you.' It wasn't really framed as a question. As Ruth's Jedi master told her when the moment is right a constellation of things happen. Firstly, people approach you and tell you that you should. Secondly, you start to think that it might be a good idea and thirdly, you sit down and do the application which demonstrates if the moment is right.

**Katharine Morgan:** The problem is trying



Lesley Whalan



Melissa Gillies



Naomi Sharp



Katharine Morgan



Ruth Higgins

to time your run at it. I remember a female barrister, having this very conversation with a male and a female, and the male said, 'Well, this is when I want to get silk, so I'm going to start doing appeals and blah blah,' and the female barrister just looking at him and saying 'What do you mean 'you're going to start doing appeals?' On what planet can you choose whether appeals come to you or not?' And of course, it did, they did come to him and not to her, and so she didn't have that choice to try and generate her appellate practice. So it's all very well to say that that's what you want to do, but it's not possible if the work doesn't come.

**Ruth Higgins:** Timing is so important but your perspective on it can change. Me and my partner Tamson had been offered Visiting Fellowships at New College in Oxford for 3 months from October 2016. When we accepted that, I effectively decided I would not be applying in July 2017 because I'd taken a chunk of time out of my table. But when it came to it, because I'd been keeping my table for a couple of years, I thought that the three months would not be the thing that would make or break it. Also, I had spent those three months thinking law thoughts in a different way.

**Naomi Sharp:** I think it's very important to have the experience of being on your feet for a considerable period before applying for silk. And leading juniors. You have to demonstrate that you occupy a position of leadership.

**Ruth Higgins:** I completely agree with Naomi. Crucially, it also makes the transition easier because there is a natural progression as opposed to a step change. It's important to remember that the question is not just: Will I get it? But also: Will I thrive if I get it?

**Katharine Morgan:** I think it's essential to already to be practising like a silk. If you haven't got essentially a silk's practice when you apply, you have to be an otherwise standout candidate for some other reason – and there have been people who have got it

who haven't operated as a silk in the sense of run their own matters and had juniors for a year or two.

**Lesley Whalan:** I absolutely agree that you have to have a silk's practice to meet the criteria. And I think that I had consciously moved in the direction of not being led myself and encouraging my solicitors to provide me with juniors, which they did in cases where that was warranted, so that was really, really good. I think that some senior junior women lack the confidence to move in those directions and stop being led.

**Naomi Sharp:** I too agree.

**Gail Furness:** But you say that as though it's all under our control.

**Lesley Whalan:** Do I?

**Gail Furness:** Yes, it isn't under our control. To say to stop being led, that either means that you reject briefs where you are being led or you say to the solicitor, 'Treat me as a silk and give me a junior' and I'm not sure that that's always going to happen.

**Lesley Whalan:** No, I accept that it doesn't always. But it's something to strive for.

**Katharine Morgan:** I think that the best message you can send is this idea that you can be more proactive than you think. You probably can't do as much as you would like to do, in terms of the kind of practice you would want, but you can probably be more strategic. And to look at the criteria a long way out and just think, 'Well, how am I going to get myself in this position? Can I do this kind of work that will get me on my feet in front of all the judges?' I just think that the judges have incredible sway and they need to see you on your feet running cases.

**Naomi Sharp:** I agree with Kate's view. It's good advice. In retrospect, I wish I had thought more about that at the time.

**Ruth Higgins:** The significance of the judges cannot be understated. I had a pretty specific strategy around eight, nine years out of increasing my Supreme Court work because I had had a historically very Federal Court weighted practice. And of course,

introducing that kind of diversity in fact improves your practice and makes it more fun.

**Gail Furness:** I know a couple of judges who have said to me over recent times, Supreme Court judges, that they just don't see enough women on their feet. They get the list, but they just don't see them and therefore don't know who they are.

**Katharine Morgan:** Well Gleeson J kept stats for a while. I think it was less than three per cent for female, less than five per cent – and that's the Federal Court.

**Lesley Whalan:** When you see those statis-

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tics they're astonishingly bad.

**Naomi Sharp:** It's completely appalling. I wonder what it is in the High Court.

**Ruth Higgins:** There was an article about that in the ALJ a couple of years ago. The stats are bad. But they are improving and they will continue to improve.

**Melissa Gillies:** I feel quite removed from that experience. In the Family Court and the Federal Circuit Court it is not unusual to have a bar table with only female practitioners, a female judge and female court staff. There is also a wealth of trial experience available to competent practitioners. There are literally months in my diary where I have run back to back trials. There is no better way of preparing yourself for the transition and earning the attention of the people who will be consulted on whether or not you are ready for the appointment than consistently running trials.

### The announcement

**Katharine Morgan:** I spent the morning with Tim Game, who was on the committee. He didn't mention it, I didn't mention it,

so I was convinced I was not going to get it.

**Lesley Whalan:** I was in Melbourne. I had just settled an infant brain damaged case the day before and I was flat after gearing up for that. It was meant to start before a jury for five weeks on the following Monday, which is a public holiday for us but not in Melbourne, but we settled.

**Naomi Sharp:** I was in Tilba mowing the lawn in an attempt to distract myself.

**Ruth Higgins:** I took the morning off and sat down by the water at Birchgrove and focussed on being grateful for whatever outcome occurred because either would teach me something. But all of those zen-tastic efforts aside, I was gut-gnawingly nervous.

**Melissa Gillies:** I was sitting at Melbourne Royal waiting to compete on my horse. I had a deal with my clerk that if I got it she would ring and if I didn't she would text so I could slink off and have a moment by myself to recover my composure. It wasn't a very pretty performance on my horse that day but we did get a ribbon.

**Katharine Morgan:** It was a bit unpleasant at the time that the silk were announced. There was unhappiness that there were so many women on the list as a proportion. And that's always complicated.

**Katharine Morgan:** It was the closest they had come to half. They came close a couple of years ago. And that was just unpleasant. It left a bad taste in my mouth, knowing that there were people complaining on that basis.

**Lesley Whalan:** Questions were raised about whether a quota had been installed.

**Melissa Gillies:** Until last week I was the only female silk in NSW that had a dedicated family law practice. The application process permitted me to hold my head high amongst what I thought was some really negative publicity about the number of women appointed and confirm to me that I deserved it. There will always be people that will say that someone got something for some reason unrelated to ability. I had to develop the attitude of, 'Let them.'

### Expectations

**Lesley Whalan:** I think the best way that I can answer it is that I didn't expect there to be a big change in my practice, and there hasn't been.

**Naomi Sharp:** One of the lovely things is that I always get a junior now and I've had the opportunity to meet a lot of new and

talented barristers.

**Ruth Higgins:** I expected that people who had always briefed me would continue to: not in all cases, but in appropriate cases. I have a perhaps simplistic view that if you bring good will and effort to your interactions in the world it will, in large part, come up to meet you. I assumed I would get some new kinds of work and some component of essentially equitable briefing briefs for a commercial female silk.

**Katharine Morgan:** I'll tell you something that I found very interesting, and pitch in Lesley if you have this perception. One was that, like Lesley, I've been practising for the last three or four years with juniors and have been on my feet a lot my entire practice despite the commercial stuff. I was still surprised at my own level of confidence increasing in terms of 'yes, this is what we should do, forget about that, we're doing this,' and sitting there with people and just saying 'buck stops with me, I'm captain of the ship', how many more metaphors can I think of. But actually feeling confident in that decision, even though it was the same decision I would've made a month before, but somehow it was different. So that

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I've been surprised at.

**Lesley Whalan:** I think that there is a higher degree of confidence placed in you by solicitors and a higher degree of confidence that you place in yourself as a barrister. And I agree that a noticeable difference has been to be more seen and heard.

**Naomi Sharp:** I share Kate and Lesley's perception that there is a certain amount of respect that comes with the appointment to senior counsel.

**Ruth Higgins:** Like Kate, I was surprised at

how quickly and comfortably I was willing to take control for how matters are run; even with very senior solicitors who have been running cases for much longer than I have - although I always want to know what they think and why they think it. Solicitors expect that degree of confidence and are entitled to it. It's part of the gig. And it's a brilliant part of the gig too.

**Mentoring**

**Gail Furness:** Do you feel that you should be a mentor to younger women at the bar? Is that leadership role in your minds?

**Lesley Whalan:** Yes.

**Katharine Morgan:** I've always been.

**Ruth Higgins:** I agree: all women should look out for each other. I had five brilliant

women readers before taking silk, alongside some very great men, and you have to extend the networks beyond that too.

**Katharine Morgan:** I think that has changed for me over the years, definitely. For me more recently, it's very much having a preference for female juniors and obviously not putting up with crap. You know, if someone says something inappropriate, calling it out in front of the female juniors and being conscious of inappropriate behaviour. I think I'm much more public, much more standing up to that behaviour in public and modelling that behaviour for juniors and female solicitors.

**Lesley Whalan:** I've always had a kind of mentoring ethic I suppose and I wouldn't say that I've noticed a big difference before and after taking silk in the way that I've approached that.

**Naomi Sharp:** One of the things that I have most enjoyed about my time at the bar has been the terrific support network of female barristers and I've always been very happy to be a part of that network, both as a beneficiary and as a mentor. The crew of female barristers I know are really so clever and so fun. I think there is a really strong tradition of more senior women mentoring more junior women at the NSW Bar. I've always tried my best to assist in the career development of my more junior female colleagues.

**Ruth Higgins:** There's not much to add to that. The most obvious thing we can do is put forward great young women for junior briefs and recommend other women silks when you are jammed and can't accept a brief. Our generation of women lawyers are so deeply indebted to the previous two generations. We're the beneficiaries of years of progress on their part, both the large gestures and the quotidian nudging of existing norms to begin

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new forms of work practice. We have the opportunity to tell our own story about this and to involve younger women in that narrative.

**Lesley Whalan:** I think that some of your colleagues, say, in your chambers, look to you to take more of a leadership role.

**Lesley Whalan:** I think it's important to communicate that getting silk and going for silk is about wanting to lead. I think you've got to want to model the right behaviour ethically, professionally – and I think that's one of the criteria.

**Melissa Gillies:** I really haven't noticed a difference. My door opens with questions as much as it did before the appointment and I will always be grateful for that. It is one of the fun parts of being a senior practitioner, whether that is silk or otherwise.

### One-year in

**Lesley Whalan:** It's been the same for me, work-wise and practice-wise.

**Katharine Morgan:** I got my first plaintiff matter. In fact, you know, that's actually a very interesting point. I've got my first ever in this year. So one is a plaintiff med-neg one, and I got an appellant (a plaintiff) in the Court of Appeal. And the other one is a class action applicant in the Federal Court.

**Naomi Sharp:** I think my practice has been a natural progression and has steadily evolved. I fretted a lot about experiencing a dip in my practice upon taking silk. There was definitely a period when I was not receiving calls at the same frequency but I'm currently as busy as I ever had been. I suspect most new silks have first year jitters for a while.

**Ruth Higgins:** It's been great fun. The most noticeable and rewarding change for me has been a high level of appeal work in the Federal and Supreme courts and in special leave applications. I still get the core kinds of work I did before: defendant class action, respondent competition law with a bit of Crown/Commonwealth work in there too, energy arbitrations, insolvency, schemes of arrangement. But I also get things I've never done: tax, industrial relations and the like. One thing that has been deeply rewarding is going up immediately against the silks I deeply respected and worked with a lot: Justin, Noel, Bret, John, Neil Young and the like. It impels you into the role.



**Melissa Gillies:** One of the junior barristers on my floor commented on how much more relaxed I appeared in the months after the appointment. He made the observation that he had noticed the same thing with other silks who had been appointed in our jurisdiction in the past years. His theory was that we were all so stressed in the 12 to 18 months before the application was going in trying to make every matter count for our application and that translated into feeling the pressure of each and every appearance. Reflecting on that I think he is right. After a couple of months there was a definite experience for me of exhaling and thinking, 'I've got this'.

**Gail Furness:** So what are your expectations going forward in terms of what work you're going to do? Kate?

**Katharine Morgan:** Well I leave the jurisdiction, as you know, in six weeks and four days, so who knows? People might have forgotten me in July. I've got matters that won't even be on yet, so they'll be still around.

**Naomi Sharp:** I'm really looking forward to seeing how my practice as a silk develops. Currently I'm doing a lot of work for the regulators, which I very much enjoy, but it would also be good to spend some time on the other side of the record.

**Ruth Higgins:** I'm excited to see what happens and would be pretty happy if it stayed as it is right now.

**Gail Furness:** Now, women in increasing numbers are going to the bench, and silks are obviously the main source. Have you thought about that? Going to the bench?

**Lesley Whalan:** It's not something that really appeals to me. I'm really happy at the bar and I'm not focussed at all on that kind of an appointment.

The five women silk appointees from NSW took their bows before the High Court of Australia on Monday, 5 February 2018. Kate Morgan SC (second from the left); Lesley Whalan SC (7th from the left); Ruth Higgins SC (3rd from the right); Naomi Sharp SC (2nd from the right); Melissa Gillies SC (1st on the right).

**Katharine Morgan:** I think the world agrees and I'm happy for you to leave this in, that my temperament is ill-suited to judicial life.

**Naomi Sharp:** Kate I'm sure that last statement will be quoted at your swearing in. Judicial appointment is something I would certainly consider at some time in the future.

**Ruth Higgins:** My dad was a judge and I've always thought it's a very meaningful way to participate in civil society. I want to spend time really mastering the business of being a silk, but think it would be a great honour to be a judge one day.

**Melissa Gillies:** Acting as an arbitrator has certainly been a real eye opener about what life on the bench would look like. I'm happy doing what I am doing.

### Downsides?

**Lesley Whalan:** No, I can't say there has been.

**Naomi Sharp:** Not for me. One year in I'm very happy where this is going.

**Ruth Higgins:** Nor for me. So far it's a very rewarding and happily challenging thing.

**Melissa Gillies:** None. I even prefer the lighter robes!

**Katharine Morgan:** The never ending helpful comments about the 'problem' of female silks 'not sticking around'.