

Working for Justice

ANTONELLA
GAMBOTTO-
BURKE PROFILES

MICHAEL
HARMER,
THE LEGAL
CRUSADER AND
PHILANTHROPIST
BACK IN THE
SPOTLIGHT WITH
THE DAVID
JONES SEXUAL
HARASSMENT
ALLEGATIONS.

PHOTOGRAPHY
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In court, he is known as The Undertaker. Few recall hearing him ever raise his voice; he speaks so softly that the judges who preside over his cases are forced to lean forward and ask him to speak up. During major cases, he sleeps one to two hours a night for weeks on end, seemingly without effect. His swift movement, preternaturally slender frame, dishevelled black chain-store suits and large, unblinking eyes intimidate without effort. Widely regarded as the best workplace relations lawyer in the southern hemisphere – before setting up his own shop, he ran the biggest practice at Australia’s biggest firm – Michael Harmer is, at heart, a grassroots revolutionary. “My father had a saying I’ve adopted,” he murmurs. “All dies in the man who flees in the face of injustice.”

His manner is gentle, mindful, curious, in keeping with that of his great hero, Mohandas “Mahatma” Gandhi – “a magnificent universalist”. Harmer doesn’t drink, smoke, eat meat (“some days I’m vegan”) or belong to any one faith. “I just believe in them all,” he shrugs. “There are as many paths as there are personalities.” Away from the office, the imperturbable strategic genius can be vague; friends recall him running out of petrol on his way to dinner and slowly pouring fuel on his shoes as he tried to fill the tank.

Every morning, he stands on his head or meditates with his graceful wife of 10 years, Indian-born psychologist Neeru Chadda. They met at Australia’s Baha’i temple and married at Taronga Zoo in a ceremony overlooking the elephants’ enclosure. His family lives in a modest house in Sydney’s northern suburbs, and he drives a dilapidated 13-year-old station wagon with roof racks, “the most valuable part of the thing”. At seven each morning, he breakfasts with two of his three children (the eldest, 21-year-old stepson Arun, is with the Royal Australian Regiment and only “just back from Afghanistan”). In the evening, after playing with his daughter Daya, aged nine, and son Rama, three, he washes the dishes and scrubs the kitchen while listening to philosophical readings on CD. It’s his way of staying grounded.

Perched on one of nine chairs around an old oval conference table that he “picked up cheap” when his firm took over “the usual B-grade” premises in Sydney’s CBD, Harmer is, uncharacteristically, in semi-business attire – shirt, trousers, “tatty” v-necked jumper (he is said to live in them), sneakers and a tracksuit top; when not in court, he advises clients while wearing jeans that fit him like a wet paper bag. The paintings on the walls are not investments but the former environmental committee chairperson’s uneven efforts; the



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music that plays for waiting clients is also often the work of his staff. Outside is a panoramic view of western Sydney. It is, Harmer notes with satisfaction, “an industrial outlook”.

His firm, Harmers Workplace Lawyers, is an established blue-chip specialist. It began in “two little boxy offices” with five legal practitioners, two support staff and no corporate clients (a large number rapidly defected from his old firm, Freehills, to join him), but it now employs more than 60 people and has expanded to Melbourne and Brisbane.

Harmers has acted for companies in the top five in the world (on a capitalisation basis), 25 of the top 100 employers in Australia, numerous federal judges, three CEOs from the major banks, commercial television networks, the local ski industry (for which it has just secured one of the most flexible awards in the country) and celebrities such as Jana Wendt. Harmers is also responsible for many landmark cases, two notable ones being *Christina Rich v PricewaterhouseCoopers* (the largest sex discrimination claim in Australian history) and *Gough & Gilmour Holdings versus Caterpillar* (the largest unfair contracts claim). More recently, Harmers announced it was acting for Kristy Fraser-Kirk, the 25-year-old woman whose sexual harassment complaint against David Jones chief executive Mark McInnes triggered his shock resignation and a confession of “unbecoming” conduct.

In 14 years of practice, Harmers has won multiple awards, among them employment specialist law firm of the year for five consecutive years at the Australasian Legal Business Australasian Law Awards; the 2004 Australian Human Resources Institute award for excellence in people management; the Victorian government’s 2003 workplace excellence award; the Queensland Law Society’s 2002 employer of choice award; and an Australian Institute of Management award. The firm achieved a first-tier ranking in its second year of operation in the Asia Pacific Legal 500 Survey and ranked in the top 25 best-practice organisations across all Australian industries in managing work-life balance for six consecutive years, reaching as high as No 4.

Harmer’s universalist principles mean that the firm has also undertaken hundreds of cases for those unable to afford even a single consultation. The firm allocates 5 per cent of its budgeted revenue to pro bono cases each year. Rebecca Bloomfield was one such client. One of two women trying to become the first female stewards in Australian thoroughbred racing, she was represented by Harmer in a high-profile anti-discrimination case against the Australian Jockey Club in the mid-1990s. The action, which was settled out of court, alleged the club had repeatedly picked men who were less qualified. “The AJC’s major concern was how ‘skirts’ could climb the tower without showing a bit of underwear and how emotionally delicate ‘skirts’ would be with trainers and jockeys in hearings dealing with incidents on race days,” Bloomfield roars.



“We were very, very happy with the result. Michael’s attention to detail was exceptional; I think he really enjoys being a bone in his opponent’s throat. I remain in awe of him. He is exceptionally ethical, and unafraid to take on the big guns.”

Now 50, Harmer was the second of four children to Maureen, a housewife, and Bob, an oil company executive. As both grandfathers died at a young age, his parents were unable to finish their schooling. “My mother, who had a scholarship, was forced to start work at a Kodak factory at 14, and my father started work at the age of 15,” he says. His father was employed by Caltex for 40 years, starting as an office clerk and ending up a national manager. His mother was eventually made administrator of what was then the leading seminary of the Australian Catholic Church, St Patrick’s in Manly.

Harmer was born in Victoria but raised in the bush “just outside Hobart”, where he enjoyed “footy and cricket, combat, cycling, that sort of thing”; never much of a reader, he still loves Aussie Rules football, kayaking, running and

hiking. He is a middle distance runner who used to warm up with marathons; until sidelined by a hip injury, he was a schoolboy state champion. The family relocated to Sydney's northern beaches when Harmer was 13.

His father, "a very principled person who could be quite abrasive in the workplace", insisted on honesty, and, as Harmer says, "his career perhaps suffered as a result". He says the Caltex refinery at Kurnell, where his father spent some time working, was "one of the industrial hotbeds in Australia". Employees of a multinational's small subsidiary, the staff of Caltex Australia were treated – and here Harmer pauses – "as less than they should have been. So I learnt a lot about the realpolitik of multinational corporations. I also learnt how readily people who have worked for companies their whole lives can be cast aside if they take a stance. A person's family can also become victims of company politics, in that they determine where the family lives, and so on. It made me understand injustice". His voice is almost inaudible.

In addition to the usual retail jobs undertaken to support his law and economics degrees – Harmer did shifts at Woolworths, in the shoe department at David Jones, and as an athletics coach – he began working for the Electrical Trades Union, so he was "well and truly entrenched in workplace relations" by the time he had completed his studies. His first formal job was as a solicitor for the NSW Department of Industrial Relations. "I viewed a lot of fatalities," he says, "and that made me understand how important compliance is, and how devastating the impact of errant employers can be. Every one of these cases affects you. Employers need to understand that by complying with the law and achieving best practice, they create huge benefits, for both business and employees."

It was during his time as a partner at Freehills that Harmer began rising at six on Saturday mornings to ladle soup and pour coffee for homeless and infirm men at the Matthew Talbot Hostel in Sydney. "I was trying to keep a mooring, if you like. My main interest outside work, other than sport and athletics, was exploring various faiths and philosophies and other ways forward in life. Aligning my work to my beliefs is very important to me, and utilising the fruits of that labour to rectify injustice in the world has always been what being a lawyer is about for me. Justice is a way of life."

Early in the '90s, Harmer began giving millions of dollars to charity. Some years, he gave more than half his earnings to abandoned, abused and orphaned African children, in the process supporting three orphanages in Kenya and Zimbabwe and setting up his friend Kip Keino's school in Kenya and a children's home bearing Kip's name in Zimbabwe. (Keino, motherless from the age of three and also a middle-distance runner, was a gold medallist at both the 1968 and 1972 Olympics.) Harmers still donates 25 per cent of its profits to run the home; the sum used to be closer to 30 per cent, but, as Harmer explains, "the recession had an impact". The firm has also built up a large number of schools ("mainly in Zimbabwe and Kenya and to a lesser extent in Zambia"), is the main supporter of a Zambian community centre that cares for hundreds of orphans and pays two doctors to cater to 100,000 patients in an impoverished district of Zimbabwe.

Harmer's principles determine not only his philanthropy and legal service, but also his firm's groundbreaking culture. Labelled the "first communist law firm" by Peter Tighe, the national secretary of the Communications Electrical

Plumbing Union, Harmers is based on "this notion of everyone being on profit share, and therefore having a say in the running of the firm". The books, Harmer says, are "completely open". Which means that in terms of operation, Harmers offers more information to receptionists than partners can expect at most other firms – one reason, perhaps, for the university gold medallists and Rhodes scholars on its staff.

Apart from days when partners are required to suit up for court or clients, a plain-clothes policy has been in effect from the start. (Relaxation, Harmer says, has been shown to be conducive to both workplace contentment and productivity.) For years, masseurs came every week to perform full body massages on the entire staff. To their amusement, clients were also offered massages if due in court that day as key witnesses.

These and numerous other innovations are thought to be responsible for Harmers' low historical rate of attrition during economic times that have wrought havoc at other firms. More than 10 per cent of Harmers' staff have been with the firm since close to its inception. As Harmers' remuneration system is based on sharing rather than hoarding work and client hours, a rewarding work-life balance is possible, meaning that the best female practitioners have remained. "Almost 50 per cent of the women in our firm are part-time," Harmer says. "We encourage the development of career in tandem with personal life, and that builds long-term quality staff to service clients." Unlike corporate associates in finance, Harmers has no issue with diversity: 70 per cent of its staff is female, something Harmer attributes to the fact that "most of the best graduates these days just happen to be female".

A specialist in partner disputes, he has also acted for and against legal firms, observing that they are "not at the forefront of the achievement of fairness" in staff treatment. Much of this is due, he says, to flaws within the patriarchal corporate model. "Law firms were monastic dynasties of men, and what you find in large firms is that life is often only as good as the immediate supervising partner."

After reading research showing that almost one in three solicitors – and one in five barristers – is afflicted by depression, Harmer arranged for industrial psychologists to train his staff, because "workplace lawyers need to be able to help and support people going through stress, and also to help ourselves because we are constantly dealing with very stressed people. I've seen the impact of that on lawyers, all the way to suicide".

Harmers may also be unique in providing clients in need with psychological support, "which we, as a firm, pay for". No one, Harmer stresses, should make vital life decisions without support. By giving clients an empathetic hearing and practical options, a psychologist told him, lawyers can help with about 60 per cent of the healing process for post-traumatic stress disorder or depression resulting from a workplace incident.

Aware that his firm's workplace culture may strike some as "a tad weird", The Undertaker enjoys reminding people that it has historically been one of the nation's fastest-growing and most profitable legal practices. It is, he knows, worthwhile to try to change the world. The major changes this humanitarian reformer would like to see at a federal level is the adoption of a national charter of workplace rights as a standard to which Australian workplaces must be accredited. "And for it all to be tied to the tax system and other incentives to get real change on the ground. The greatest thing that can be done in terms of preventive health is to improve workplace culture. It's always good business to treat people well, with consequences for the economy at the macro and micro levels." ■

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