

WOMEN IN LITIGATION*

"Equitable Briefing"

The Hon Justice Michelle Gordon AC

High Court of Australia

21 July 2026

I acknowledge the traditional owners of the land on which we meet - the peoples of the Eastern Kulin nation - and pay my respects to their elders past and present. I also acknowledge and pay my respects to all Traditional Custodians and Elders and to the continuation of the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples. That acknowledgement is important. It is a reminder to us all of our history and our shared future.

Earlier this year, a university residential college held two events: the first "Ladies We Love (Mothers and Significant Others)". The second, held two months later, "Men We Admire (Fathers and Significant Others)". I do not criticise holding the events: the first celebrated 50 years of women at the college and launched a scholarship reflecting the spirit of women who had shaped the college - those who lead, contribute and build community. My concern, my surprise, is that in 2026, the headline is "*Ladies We Love*", "*Men We Admire*".

Those events explain why in 2026 we need events for women by women but also why we need events that accurately reflect and promote women: acknowledge the past, celebrate the now (reflected in the extraordinary solicitors and barristers here this evening) and whilst, at the same time, recognising the work that still is to be done in seeking to achieve not only equality but also equity for women in the law. To Arnold Bloch Liebler, especially Elly Bishop (who I had the privilege of working with 10 years ago), Emma Ffrench-Mullen and Molly Scott, thank you for this event and for the invitation to speak.

Is it getting better for female barristers? In the Law Council of Australia Equitable Briefing Policy Report for 2024-2025, published earlier this year, women barristers received 32 per cent of the 35,380 briefs reported by briefing entities.¹ In the 2016-2017 financial year, that percentage was only 20 per cent.² The

* Leonie Thompson, a partner at Arnold Bloch Liebler, was a dear friend and someone I respected and admired. Promoting "Women in Litigation" was at the core of who Leonie was and it is one of her lasting legacies. I wish to acknowledge the assistance of Alison Lee, my Senior Associate, in the preparation of this speech as well as the junior female barristers who, on being consulted, responded with suggestions for change. Any errors are mine.

¹ Law Council of Australia, *Equitable Briefing Policy Report 2024-2025* (2025) at 3.

² Law Council of Australia, *National Model Gender Equitable Briefing Policy Annual Report 2016-2017* (2017) at 10.

Report also recorded that women barristers received 31 per cent of the total value of all brief fees - the first time this target was achieved since it was set in 2016.³

But those statistics don't tell the whole story – as Carly Fiorina, former executive, president and chair of Hewlett Packard once said, "the goal is to turn data into information and information into insight".⁴ Let me try and do that with that data.

First, the data or sample size is small. Reporting for 2024-2025 dropped by 12 per cent.⁵ Given that reporting is voluntary, it is difficult to discern how representative the statistics are, and whether they are affected by self-reporting bias. In addition, briefing rates and percentages of brief fees only tell part of the story. Other research from the Supreme Court of Victoria indicates that in 2023-2024, women took up only about 19 per cent of the speaking roles in the commercial division, and 18 per cent in civil appeals.⁶ In the High Court in the last financial year, women had speaking roles in 40 per cent of Full Court matters, although those women with speaking roles only accounted for 20 per cent of the total number of counsel speaking. As a profession, I know we can do better.

Second, the report does not seek to identify *why* equality but also equity for women in the law matters. Equity cannot be achieved through equality. But equality can be achieved through equity. The difference is critical. It is not just about providing the same opportunities to women and men - it is about considering whether the conditions to access those opportunities are fair. Diversity is an investment in the profession's future.

Although much of what I will say is directed at supporting women with caregiving responsibilities, I also wish to acknowledge that diversity for women takes a number of different forms, and may also intersect with other identities, including cultural and linguistic diversity; being Aboriginal or Torres Strait Islander; living with disability; socio-economic disadvantage; sexual orientation; and gender diversity. A profession that draws from a narrow pool of talent will be less creative, less resilient, and less legitimate in the eyes of the public.

Third, the report does not address what can be *done* about the issue of equality but also equity for women in the law – individually, collectively or institutionally.

³ Law Council of Australia, *Equitable Briefing Policy Report 2024–2025* (2025) at 3; Law Society of New South Wales, 'Equitable Briefing' (online), available at <<https://www.lawsociety.com.au/advocacy-and-resources/advancement-of-women/equitable-briefing>>.

⁴ Carly Fiorina, 'Information: the Currency of the Digital Age', speech delivered at Oracle OpenWorld, San Francisco, 6 December 2004.

⁵ Law Council of Australia, *Equitable Briefing Policy Report 2024–2025* (2025) at 7.

⁶ Supreme Court of Victoria, *Commercial Court Data on Gender of Counsel* (2024); Supreme Court of Victoria, *Court of Appeal Counsel Data on Gender of Counsel* (2024).

My aim today is to suggest a number of steps that can be implemented to encourage equitable briefing at the bar. They are not intended to be grand, sweeping reforms. They are intended to be practical and direct. And they are drawn from wonderful suggestions provided by female barristers at the Victorian Bar who were consulted for this speech. I have the privilege of speaking on their behalf.

From the outset, I wish to acknowledge a structural divide that is, regrettably, all too familiar – the treatment of women with caregiving responsibilities versus men without caregiving responsibilities. This is not to say that men are not parents, or men are not primary caregivers. This is to acknowledge the reality that more often than not, when women have children, that pregnancy involves a very real, physical toll; that there are far greater societal expectations on their availability and presence in the family home; and that many women hold understandable concerns about the compatibility of a career at the bar with life as a mother. With those issues in mind, many of my suggestions will be directed to supporting women with childcare responsibilities; although they will also be relevant to any person, regardless of gender, who is a primary caregiver or parent.

My first suggestion is simple. Courts should keep to court hours. Sometimes, sitting past 4:15 pm may be the inevitable reality of court work; but this should be the absolute exception and not the norm. It is unfair to place women in the uncomfortable position of having to explain that they are unable to keep sitting because they need to leave to pick up children or relieve care givers. Where courts do extend their sitting hours, the courts should endeavour to communicate those expectations in advance, so that alternative care arrangements can be made. A practice direction that says that courts are not to sit before or after court sitting hours, except by exception, would be a simple but powerful measure that would normalise caring responsibilities. A practical measure that would enable *all* carers to do the work on a level playing field. It would create certainty and thereby remove a critical stressor.

For those who are pregnant or breastfeeding, the courts should also aim to implement other practical and straightforward accommodations, such as mid-morning breaks and to provide, where possible, lactation rooms.

On a similar note, conferences should be scheduled during the working day - not at 5:00 pm or 6:00 pm on a Tuesday. Even the timing of tonight's event caused me to stop and reflect. If we foster a culture that understands and appreciates that people – women and men included – have family obligations and are therefore unlikely to be available at certain times of day – then we are on the right path to tackling the structural divide between women with caregiving responsibilities and men without caregiving responsibilities.

It is also important to make women equally visible. In conferences, meetings and other settings with clients, I suggest that it is not only incumbent upon women, but also men, to check and ensure that women are introduced and that their work is acknowledged. In 2026, my former female associates still report being interrupted during conferences and their ideas being adopted by their male colleagues. Everyone in every room has a responsibility to politely call out this conduct – as simple as saying "I would like [X] to finish her thought, I want to hear what they have to say".

My next suggestion is – to the best of everyone's ability – to brief matters in advance. Again, sometimes it is an inevitable reality of trial work that matters are briefed at short notice and at the last minute. But as a rule, matters should, depending on the nature and complexity of the case, be briefed a number of weeks in advance. Again, facilitating women accepting briefs.

Related to this is normalising and reinforcing familiarity with school holidays. As a trial judge, I did it in relation to religious holidays for all faiths. The diary recorded the dates. It is not difficult. Considering whether a timetable conflicts with school holidays should come naturally and not as an afterthought. If we accept, as we must, that the very best barristers include women with caregiving responsibilities; then we must be conscious to ensure they remain in the matters in which they are briefed.

In terms of briefing women barristers, I would also encourage law firms to be conscious of their own culture and the support they offer to women solicitors in litigation teams and across the firm generally. In some ways, equitable briefing is only the tip of the iceberg. In a recent survey of law firms, 6.8 per cent of female solicitors rated their firm's support as poor, while a further 2.5 per cent described their firm's efforts to support their ability to advance as "terrible".⁷ If we are to have meaningful change in the ways in which we think about success, that needs to be rooted in a deeper and underlying shift across the legal profession. We all need meaningful, available and engaged mentors, challenging work, honest feedback and opportunities. I know that I was and remain the beneficiary of all of that and more.

Law firms, as well, have a responsibility to establish parental leave policies that are genuinely supportive. Promising steps have been made recently, with the introduction of gender-neutral parental leave policies. ABL's is a good example. However, there is still more work to be done in ensuring that parental leave is accessed equally by both men and women. The Workplace Gender Equality

⁷ Grace Robbie, "Female lawyers still being left behind by law firms", *Lawyers Weekly*, 15 July 2026.

Agency reports that in 2023-2024, men accounted for only 17 per cent of all primary carer leave taken.⁸

Each a significant step.

Finally, I would like to direct some words of encouragement to the barristers and aspiring barristers in the room. What I am about to say applies with equal force to solicitors. When I went to the Bar, I had a horizon of five years. I had no idea whether I had any prospect of carving out a career as a barrister. Whether or not that is your horizon, life as a new barrister focuses upon the pressing needs of today rather than longer-term considerations. What am I to do with the brief that I now have? How am I to build a practice? How am I travelling financially this week? How am I to balance my practice and being a carer of a child?

These pressures are very real, especially in the current environment. They are further magnified by the fact that most lawyers (some would say nearly all) are driven by competing forces of vanity and insecurity. Vanity tells the lawyer that he or she can do the work better than others. Insecurity tells the lawyer that he or she cannot do that and, what's worse, everyone else knows that to be true – commonly known as the "imposter syndrome". I had it and I still have it. Many judges – very good judges – have it. I would also dare to say that imposter syndrome affects, on average, more deeply, far more women than men.

It is fine to acknowledge imposter syndrome. But you must confine it. Do not allow fear to dictate your actions. Fear of the unknown; fear that you will embarrass yourself; fear that you will not do justice to your client. The question to ask is "not what if I fail, but, what if I succeed" and success is not winning. Success is doing the best for your client consistent with your ethical obligations. If you end up, as perhaps, invariably you will, as the only woman in a room, I urge you to remember that I, and the other senior women in the legal profession, are cheering you on. There are many to support you to ensure that you are the best version of yourself. Events like tonight are testament to that fact.

Being a junior lawyer – a barrister or a solicitor – is a powerful thing: it means you are the future of our profession and I am confident that the profession and the administration of justice are in very good hands. I wish you all the very best for the future.

⁸ Workplace Gender Equality Agency, *Parental Leave Policies for Women and Men* (2025).