

WOMEN AT THE COMMERCIAL BAR AND ON THE BENCH

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International Women's Day Luncheon

William Roberts Lawyers

6 March 2026

Introduction

1. Thank you for the invitation to speak today about women in the Australian legal profession and, more specifically, at the commercial Bar and on the Bench.
2. In the Western intellectual tradition, the personification of justice as a woman goes back at least as far as the Ancient Egyptian goddess Maat.¹ In Greek mythology, the goddess Themis,² was the ruler over divine justice known for her clear-sightedness, while the goddess Dike,³ was the personification of human justice and moral order. In ancient Rome, Justitia, one of the four Virtues, was depicted as a woman holding scales, representing impartiality, and a sword, symbolising power.⁴ The idea of "Lady Justice" is still invoked in statues and other decorations adorning courts across the world.⁵

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- * Justice of the High Court of Australia. I gratefully acknowledge the assistance of my associate, Kyle McIndoe, in the preparation of this speech.
- 1 See, eg, Morenz, *Egyptian Religion* (1973) at 273.
- 2 The first recorded appearance of Justice as a divine personage is in Hesiod's *Theogony*: at 901-906.
- 3 The daughter of Themis: Hesiod, *Theogony* (circa 730-700 BCE) at 901-903.
- 4 See Sutherland-Smith, "Justice unmasked: A semiotic analysis of Justitia" [2011] 185 *Semiotica* 235.
- 5 See de Ville, "Mythology and the Images of Justice" (2011) 23 *Law & Literature* 324.

3. In contrast, the *practice* of law by women is contemporary: it is only over the last century that women have come to enjoy a "significant presence [and] an accepted role"⁶ in the Australian legal profession.
4. Conversation about women in the legal profession challenges aspects of the structure of the profession and, more broadly, structural aspects of our society. Over the years, I have experienced resistance to the conversation, including thinly veiled suggestions that the topic is illegitimate or, at best, unseemly. One argument is that women do a disservice to those women who are capable of achieving senior roles in the legal profession based solely on merit.
5. Conversely, there are those who would say that women are now well integrated into the legal profession. There is no longer any need to advocate for women in the legal profession. We should be focussing our concern on lack of diversity, which raises a host of important issues.
6. These conversations often have a hostile edge. I am glad to have reached a stage when I am no longer put off from talking about women and their position in the legal profession. And I am glad that you are willing to listen, at least for a while.
7. Today, I will share some recent data that illustrates the current achievements and challenges of women at the commercial Bar and in the judiciary. My conclusion is consistent with the recent observation of Juliana Warner, the 2025 President of the Law Council of Australia, concerning women in law more generally. That is, while some barriers have been gradually removed over time, others persist as women lawyers endeavour to balance a demanding career with family and carer responsibilities.⁷ In simple terms, gender remains a real equity concern in Australia for the commercial Bar, and for the judiciary.
8. Before talking about the data, I will say something about the entry and progression of women into the Australian bar and judiciary, to emphasise the recency of these developments. I will conclude by offering some ideas for improving women's participation at the Bar, and maintaining participation on the Bench.

6 Justice Crennan, "Foley's List Event: 'Celebration of Women in the Law'" (Speech, Melbourne, 16 April 2014) at 1.

7 Warner, "Foreword" in International Bar Association, *Raising the Bar: Women in Law Project* (2026) at 4.

First wave feminism and women's early entry into the legal profession

9. The history of women in Australian legal practice can be situated in relation to feminism in Australia. The first wave of Australian feminism, occurring in the late 19th and early 20th centuries, focussed on issues that we now take completely for granted: a woman's capacity to own property in her own right and the right to vote. In 1894, the South Australian parliament passed legislation which not only gave women the right to vote but also the right to stand for parliament, making South Australia the first place in Australia to provide these dual political rights.⁸
10. By the turn of the 20th century, women had begun to enrol in law schools in anticipation of legislative reform which would permit them to practice.⁹ In 1897, Flos Greig was the first woman to attend Melbourne Law School. In 1902, Australian women over the age of 21 obtained the right to vote at Commonwealth elections.¹⁰
11. Miss Greig was a driving force behind the statute that permitted women to be admitted to practice in Victoria. The evocative *Women's Disabilities Removal Act 1903* (Vic) came into effect five days after her graduation from Melbourne Law School.¹¹ On 1 August 1905, Flos Greig became the first woman in Australia to be admitted to the legal profession.
12. Writing in 1909, Flos Greig said prophetically: "I think there will require to be several women well established in practice as solicitors, before one is likely to succeed as a barrister."¹²
13. Another pioneering woman in the legal profession was Ada Evans, Australia's first woman to graduate with a Bachelor of Laws. When Ada Evans applied to the Supreme Court of New South Wales to be registered as a student-at-law, her application was rejected on the

8 *Constitutional Amendment (Adult Suffrage) Act 1894* (SA).

9 Kirk, "Sisters Down Under: Women Lawyers in Australia" (1996) 12 *Georgia State University Law Review* 491 at 492.

10 *Commonwealth Franchise Act 1902* (Cth).

11 Kirk, "Sisters Down Under: Women Lawyers in Australia" (1996) 12 *Georgia State University Law Review* 491 at 494.

12 Greig, "The Law as a Profession for Women" (1909) 6 *Commonwealth Law Review* 145 at 152.

ground that there was no precedent.¹³ In 1921, Ada Evans became Australia's first woman barrister, although she never practised.

14. In Western Australia, despite the *Legal Practitioners Act 1893* (WA) providing for admission as a legal practitioner to a "person", the Full Court refused Edith Haynes' application for admission in 1904. Parker J reasoned that "if the Legislature desired that a woman should be capable of being admitted as a practitioner of this Court ... they should have said so in express language".¹⁴ Burnside J rejected a contention that the words "every person" should be construed to refer to women, adding "I am not prepared to start making law". Gaudron J later referred to a similar conclusion about the meaning of the word "person"¹⁵ as "testimony to the creative genius of the common law as administered by men".¹⁶
15. In 2026, it is difficult to imagine the challenges and humiliations faced by our pioneering forebears. Those women grew up in a world dominated by the culture and morality of the British empire, where the spectre of the "angel in the house"¹⁷ loomed large. Virginia Woolf, who fantasised about killing the angel in the house, described her as "intensely sympathetic", "immensely charming" and "utterly unselfish": she was "pure", "excelled in the difficult arts of family life" and "sacrificed herself daily".¹⁸ The ideal Victorian woman, then, was not seized of a "mind or wish or her own",¹⁹ let alone desirous of a career in the law.

¹³ Justice Gaudron, "Speech for the Women Lawyers Association of New South Wales 50th Anniversary Gala Dinner" (Speech, Sydney, 13 June 2002).

¹⁴ *Re Edith Haynes* (1904) 6 WALR 209 at 211.

¹⁵ See, eg, *Ex parte Odgen* (1893) 9 WN (NSW) 116, which followed *R v Harrald* (1872) LR 7 QB 361, which had held that a married woman, though qualified by occupation and payment of rates and put on the burgess list, cannot vote at the election of town councillors. At 362, Cockburn CJ described that "[i]t is quite certain that, by the common law, a married woman's status was so entirely merged in that of her husband that she was incapable of exercising almost all public functions".

¹⁶ Justice Gaudron, "Speech for the Women Lawyers Association of New South Wales 50th Anniversary Gala Dinner" (Speech, Sydney, 13 June 2002).

¹⁷ Patmore, "The Angel in the House" (1854).

¹⁸ Woolf, "Professions for Women" (1931) in Woolf, *The Death of the Moth and Other Essays* (1942).

¹⁹ Woolf, "Professions for Women" (1931) in Woolf, *The Death of the Moth and Other Essays* (1942).

16. At the turn of the 20th century, women were not only swimming against the oppressive tide of Victorian cultural expectations. They were also seeking to join the legal profession against a backdrop of centuries of so-called "scholarship" speaking of the inferiority of women as intellectual beings.²⁰ Aristotle posited that women are possessed of an imperfect deliberative faculty,²¹ and Rousseau and Freud theorised that women are incapable of developing a sense of justice.²²
17. In the early 20th century, Schopenhauer thought that women were "suited to being the nurses and teachers of our earliest childhood precisely because they themselves are childish, silly and short-sighted".²³ And so it was that in 1911, one Member of the South Australian Legislative Council noted that "[w]omen ... often [ask] for many things that ought not to be granted to them."²⁴ Another Member simply remarked that "[l]ike chips in porridge, they [that is, female law practitioners] won't do much harm".²⁵
18. Even so, support for women was sufficient for the South Australian parliament to pass the *Female Law Practitioners Act 1911* (SA), with the Western Australian parliament following suit in 1923, when legislation was introduced into parliament by Edith Cowan, the first woman elected to an Australian parliament. With the passage of the Western Australian law, women were permitted to practise law in every Australian State and Territory.

²⁰ See, eg, Spencer, *The Principles of Biology* (1867) vol 2 at 512-513, cited in Thornton, "Who Cares? The Conundrum for Gender Equality in Legal Practice" (2020) 43(4) *University of New South Wales Law Journal* 1473 at 1473.

²¹ Aristotle, *Politics* (Warrington, trans, 1959 ed) at §1260a.

²² See Freud, "Some Psychical Consequences of the Anatomical Distinction between the Sexes" in Strachey, *The Standard Edition of the Complete Psychological Works of Sigmund Freud* (1960) vol XIX at 257-58; Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory* (1989), cited in Thornton, "'Otherness' on the Bench: How Merit is Gendered" (2007) 29 *Sydney Law Review* 391 at 409.

²³ Schopenhauer, *Studies in Pessimism* (Saunders, trans, 1913 ed) at 106.

²⁴ South Australia, Legislative Council, *Parliamentary Debates* (Hansard), 16 November 1911 at 537 (J Lewis).

²⁵ South Australia, Legislative Council, *Parliamentary Debates* (Hansard), 16 November 1911 at 535 (B A Moulden).

Second and third wave feminism

19. I will mention the second and subsequent waves of feminism briefly. The second wave, from the late 1960s to the 1980s, is remembered most for its focus on reproductive rights, women's education and workplace equality. The third wave, from the mid-1990s to the early 2010s, emphasised the diversity of women's experiences. A fourth wave, continuing to this day, has directed attention to sex-based harassment and body positivity.
20. In 2007, Professor Margaret Thornton observed "that the difference and inferiority of women is grounded *in nature* [has been] entrenched within the Western intellectual tradition". She argued that this idea had "not evaporated with the cautious letting in of women associated with Second Wave feminism" from the early 1960s.²⁶
21. The story of women at the commercial Bar in Sydney and in the Australian judiciary is a story of the "cautious letting in" of women, although that story has continued well beyond the era of second wave feminism. The "cautious letting in" of women to the judiciary commenced in 1965 when Dame Roma Mitchell became the first woman judicial officer in Australia by her appointment to the Supreme Court of South Australia.
22. Dame Roma Mitchell racked up a string of firsts in the legal profession. She was the first women to appear in the High Court, in 1938;²⁷ the first to address the Court in the 1960s;²⁸ and the first woman in Australia appointed Queens Counsel in 1962 (almost 360 years after the creation of the institution of silk).²⁹ After her after some 18 years on the Bench, Dame

26 Thornton, "Otherness on the Bench: How Merit is Gendered" (2007) 29 *Sydney Law Review* 391 at 409.

27 *Maeder v Busch* (1938) 59 CLR 684 at 694; see Magarey and Round, *Roma the First: A Biography of Dame Roma Mitchell* (2007) at 73. The first all-woman counsel team to appear in the High Court would not be briefed until 1982, in *Actors & Announcers Equity Association of Australia v Fontana Films Pty Ltd* (1982) 150 CLR 169, in which Mary Gaudron QC (as Solicitor-General for NSW) and Ruth McColl appeared for the Attorney-General of NSW intervening.

28 Thornton, "Women Practitioners" in Blackshield and Cooper (eds), *The Oxford Companion to the High Court of Australia* (2001) at 722. It appears that the case was *Hepworth v Hepworth* (1963) 110 CLR 309, in which Dame Roma appeared with an I B Burnett for the appellant wife in a matter concerning the equitable presumption of advancement.

29 Merralls, "Some Marginal Notes about Queen's Counsel" (1994) 89 *Victorian Bar News* 51. At the English Bar, women were first appointed King's Counsel in 1949: Derriman, *Pageantry of the Law* (1955) at 59.

Roma retired from judicial office to become the first woman university chancellor in Australia at the University of Adelaide and the first woman State Governor.³⁰

23. When I started my legal studies in 1984, no woman had yet been appointed to the High Court of Australia. That did not occur until Mary Gaudron's appointment in 1987. And that was only after a career in which Mary Gaudron faced repeated resistance to her professional advancement. To give just one example, despite an agreement with Michael McHugh (later a High Court Justice) to sell his chambers to her, the floor rejected the proposal and insisted that he sell to a male barrister selected by the floor. This was in the face of her credentials which included a university medal in law from the University of Sydney (achieved whilst raising her baby daughter).³¹ When she was appointed to the High Court, from the role as Solicitor-General for New South Wales, the *Justinian* magazine felt free to publish the claim that Mary Gaudron had "an emotional disposition inappropriate in a holder of judicial office".³²
24. In the late 1990s, when the Queensland Attorney-General appointed six women judges out of seven to the Supreme Court of that State in the late-1990s, the Government was accused of making appointments on the basis of gender, and not merit.³³ One senior male member of the profession notoriously described the appointments of women to judicial office as the result of "queue-jumping" and prone to "undermin[e] the intellectual rigour of the state judiciary".³⁴ To be fair, he later apologised for these statements. Also in the 1990s, when a senior barrister incautiously called his instructing solicitor on speaker phone to propose me as his junior, I had the pleasure of hearing the solicitor's answer: "This is an important matter for our client, and we don't want a woman involved."

30 See Magarey and Round, *Roma the First: A biography of Dame Roma Mitchell* (2007) at 335-336.

31 Justice McHugh, "Women Justices for the High Court" (Speech delivered at the Western Australia Law Society, 27 October 2004) at 3.

32 Kalowski, "Gaudron, Mary Genevieve" in Blackshield, Coper and Williams (eds), *The Oxford Companion to the High Court of Australia* (2001) at 294.

33 See, eg, Thomas, "Selection Process is Judicious: Welford", *Courier Mail* (2 September 2004) at 2; Sweetman, "Misjudged, Misguided Misogyny", *Courier Mail* (15 February 2000) at 15; Emerson and Newman, "Forget Judges' Gender: Gibbs / New Women on the Bench", *The Australian* (12 February 2000) at 3; Monk, "Judge Blasts 'Political' Appointees", *Courier Mail* (15 November 1999) at 1, cited in Thornton, "'Otherness' on the Bench: How Merit is Gendered" (2007) 29 *Sydney Law Review* 391 at 403.

34 Thornton, "'Otherness' on the Bench: How Merit is Gendered" (2007) 29 *Sydney Law Review* 391 at 398.

25. I wish I could say that the Victorian-era assumptions about women's roles in the workplace have long been left behind. Yet, one of my former associates at the High Court told me about an incident during her first week as a law graduate. While seated with two male graduates in a bay of graduate workstations, a male partner asked her when she had joined the firm... as a secretary. This inquiry followed questions to the two men about how they were each enjoying their first week of the graduate program.

Some numbers

26. So how far we have come since women first entered the Australian legal profession? Women like Flos Greig, Ada Evans and Dame Roma Mitchell paved the way for massive growth in the participation of women across all corners of the profession. As Chief Justice Kiefel put it in her 2022 speech to the Australian Women Lawyers' Conference: "[w]omen lawyers are present in even greater numbers; they are taking leadership positions; they are succeeding and are in positions of authority."³⁵ To illustrate the current position, knowing full well that I am in a room of lawyers, not renowned for our mathematical prowess, permit me to share some of the numbers.
27. As at 31 October 2024, both nationally and in New South Wales, women comprised 56% of practising solicitors.³⁶ Since 2020, all Australian states and territories have had more woman solicitors than male solicitors.³⁷ Between 2011 and 2024, there was an exponentially higher growth rate of woman solicitors than male solicitors: there are now about 106% more woman solicitors than there were in 2011, but only 37% more male solicitors. In October 2024, women in New South Wales comprised only 36% of private practice partners and principals, a 10% increase over the decade before.³⁸
28. Just this week, the Workplace Gender Equality Agency reported data for the year ending 31 March 2025, disclosed by several large Australian law firms. The data shows that

³⁵ Chief Justice Kiefel, "Yesterday, Today and Tomorrow - A Trend Towards Equality?" (Speech, Australian Women Lawyers' Conference, 6 August 2022) at 9.

³⁶ Urbis, *2024 National Profile of Solicitors* (13 June 2025) at 9-10.

³⁷ Urbis, *2024 National Profile of Solicitors* (13 June 2025) at 9-10.

³⁸ Urbis, *2024 National Profile of Solicitors* (13 June 2025) at 2.

women employees were paid between 8.1 to 14.9% less than their male colleagues. Two of those firms reported an increase in pay disparity on the year before.³⁹

The Bar

29. In December 2025, the International Bar Association published the Australian Raising the Bar: Women in Law Project, which reported data from the Australian Bar Association showing that women comprise just under 30% of barristers, and just over 16% of senior counsel. Here in New South Wales, the percentages are lower. As at 30 June 2025, women comprised 27% of practising barristers, and only 15% of Senior Counsel.⁴⁰ Those numbers are obviously low compared with other sections of the legal profession.
30. The percentages vary significantly by practice area. For example, in New South Wales, the data suggests that women make up 36% of the family law and guardianship Bar, but only 25% of the commercial Bar and 22% of the tax Bar. Why that is so may be a matter for debate. But one thing is certain: those numbers can be improved by firms, such as this one, choosing to brief women counsel to do more commercial work.
31. In 2016, the Law Council of Australia adopted the Equitable Briefing Policy, which encourages entities that voluntarily adopt the Policy to brief women barristers in at least 30% of all briefs and pay women barristers at least 30% of the total value of all brief fees. Over 500 entities have now adopted the Policy. For the 2023-2024 reporting period, the Law Council of Australia found that 31% of briefs by reporting entities went to women barristers, exceeding the target of the 2016 Equitable Briefing Policy by one percentage point.⁴¹ However, the gender pay gap remains: women only earned 22% of fees,⁴² which is in fact less than the 23% they earned in 2019-2020.⁴³

³⁹ Lawyerly, "Gilbert + Tobin, Ashurst report lowest gender pay gaps among top-tier firms" (online) (3 March 2026).

⁴⁰ New South Wales Bar Association, *Annual Report* (2025) at 11.

⁴¹ Law Council of Australia, *Equitable Briefing Policy Key Findings 2023-24* (2025) at 1.

⁴² Law Council of Australia, *Equitable Briefing Policy Key Findings 2023-24* (2025) at 2.

⁴³ Law Council of Australia, *Equitable Briefing Policy Annual Report: 2019-2020 Financial Year* (2021) at 6.

32. The persistence of the "cautious letting in" of women to the Bar is particularly evident at the Bar table in the High Court. According to data gathered by the former Chief Justice, Susan Kiefel, from 2007 to 2009, almost 15% of the barristers who appeared before the Court were women. From 2019 to 2021, that figure increased to 24%.⁴⁴
33. In 2025, in matters in which judgment was delivered by five or more Justices, women comprised 33% of the barristers who appeared before the High Court, but only 13.6% of the advocates who made oral submissions. Two prominent male senior counsel from the New South Wales Bar addressed the Court on 21 occasions last year, in contrast with the 22 occasions on which women addressed the Court. Both of those men have regularly appeared in the High Court since at least the mid-1990s.
34. So, it is important to acknowledge those women who do make oral submissions in Full Court matters. Senior counsel from the New South Wales Bar who have recently appeared in the High Court include Elizabeth Collins, Joanna Davidson, Kristen Deards, Zelig Heger, Ruth Higgins, Kate Morgan and Fiona Roughley. Junior counsel include Emma Bathurst, Jillian Caldwell, Surya Palaniappan, Celia Winnett and Naomi Wootton.
35. From speaking to colleagues at the Supreme Court of New South Wales and the Federal Court of Australia, I understand that the frequency of appearances by women barristers in their courts is similar. One judge in the Equity Division of the Supreme Court told me that since August 2023, women have addressed his court in just 13% of the matters in which he has presided. In the Federal Court, one judge observed that whilst women addressed her court in 27% of interlocutory applications and 31% of hearings and trials, the percentage dropped to 19% for Full Court appeals and reviews.

The bench

36. The position is significantly better on the bench. As you will know, from October 2022 to November 2023 the High Court comprised a majority of women Justices, under the Court's first woman Chief Justice. The growth in the appointment of women to judicial office across Australia has been remarkable. In 2012, women made up 10% of judicial officers nationally. By June 2025, that number had risen to 47%.⁴⁵ Following several recent appointments, the numbers are not dissimilar at superior and intermediate appellate courts. However, in New

⁴⁴ Chief Justice Kiefel, "Yesterday, Today and Tomorrow - A Trend Towards Equality?" (Speech, Australian Women Lawyers' Conference, 6 August 2022).

⁴⁵ International Bar Association, *Raising the Bar: Women in Law Project (Australia Results Report)* (2026) at 17.

South Wales, only four of the 10 Court of Appeal Judges are women. In Victoria, it is six of the 12. In the smallest jurisdiction, that is, the ACT, four of the five resident judges of the Supreme Court are women.

37. Numbers are, of course, notoriously unfeeling.⁴⁶ They fail to capture everyday interactions which can accumulate to make women's experiences of the legal profession quite different from that of their male counterparts. The general attrition rate of women from the profession remains high, and re-engagement for women who step away from the profession remains difficult. A 2014 study identified several key drivers for attrition from legal practice: differing experiences of career development between genders; the perceived male-dominated culture of the profession; unconscious bias; sexual harassment and discrimination; and inflexible working conditions.⁴⁷ In the context of our broader culture, all of these drivers tend to affect women disproportionately to men.

What can we learn? What can we do?

38. I do not assume that statistics tell the full story. Nor do I wish to dwell negatively on how far women might still have to go.⁴⁸ To the contrary, the number of women in this room and at law schools, the many women achieving brilliant things in their practise of the law, and the many people (women and otherwise) dedicated to their inclusion and success, are all cause for celebration.
39. Women are still outsiders enough in the legal profession that we are well placed to notice its weaknesses and vulnerabilities. Moreover, there are now enough of us to insist on positive changes. So, how might women's participation at the commercial Bar be improved and how can women's participation on the Bench be maintained?

⁴⁶ *Parker v The Commonwealth* (1965) 112 CLR 295 at 311.

⁴⁷ Law Council of Australia, *National Attrition and Re-Engagement Study Report* (2014) at 5, 7, 36, 76. See also Bromwich, "Mothers in the Legal Profession Doubling Up on the Double Shift during the COVID-19 Pandemic: Never Waste a Crisis" in O'Reilly and Green (eds), *Mothers, Mothering and COVID-19: Dispatches from the Pandemic* (2021) at 131; Schultz et al, *Gender and Careers in the Legal Academy* (2021).

⁴⁸ See Justice Perry, "Women at the Bar: Aspirations and Inspirations" (Speech delivered at Women Barristers Forum, Sydney, 5 April 2014).

Thinking about substantive equality

40. First, let's look beyond numerical equality and focus on substantive inclusion for women in the legal profession. As former, and first woman Governor-General, Quentin Bryce remarked in 2017, it is crucial that society does not become "complacent" with the growing number of "firsts" achieved by women.⁴⁹ The statistics indicate to me that the fight for women's inclusion in the legal profession is not over.
41. In particular, caring responsibilities for children and family members, as well as the maintenance of a household, overwhelmingly remain a woman's problem, and a serious barrier to substantive equality.⁵⁰ Pregnancy and childcare "have continued to be persistent sources of less favourable treatment for women in the workplace"⁵¹, and there remains a "marked gap between the rhetoric and reality" of workplaces in the legal profession supporting flexible work.⁵² These cultural realities must be addressed to equalise women's ability to progress through the legal profession, and to minimise attrition. One way to achieve this is by providing economic and cultural incentives for greater male investment in the economy of care - or at least by seeking to "de-feminise" the labour of care.⁵³ The goal of substantive equality must be understood to benefit not only women lawyers. Rather, it promises wider societal benefits: for our children, our families, our psychological wellbeing, and for democratic participation.⁵⁴ However, many people, and especially male lawyers and their families, remain convinced that their interests lie with the status quo.

49 Coade, "Legal Luminaries Shed Light on Sexism in the Profession", *Lawyers Weekly*, (online) (16 October 2017).

50 See, eg, Crabb, *The Wife Drought* (2015).

51 Thornton, "Who Cares? The Conundrum for Gender Equality in Legal Practice" (2022) 43 *University of New South Wales Law Journal* 1473 at 1478, citing Law Council of Australia, *National Attrition and Re-engagement Study* (2014) at 23-24.

52 Thornton, "Who cares? The conundrum for gender equality in legal practice" (2020) 43 *University of New South Wales Law Journal* 1473 at 1480.

53 See, eg, Dixon et al, *Un(Taxing) Child-care: Boosting Choice and Labour Supply through Subsidised & Tax-Deductible Child-care in Australia* (University of New South Wales New Economic Policy Initiative Report, 2019).

54 See, eg, Piccone, "Democracy, gender equality, and security" (Brookings Policy Brief, 2017); Workplace Gender Equality Agency, *Workplace gender equality: The business case* (2018); Fine, Sojo and Lawford-Smith, "Why Does Workplace Gender Diversity Matter? Justice, Organizational Benefits, and Policy" (2020) 14 *Social Issues and Policy Review* 36.

42. On a popular reality television show that is currently airing, one male suggested that he wanted five kids who could be looked after by "a maid". The male contestant expressed a preference for a "submissive" wife and agreed (at least initially) with a suggestion that he wished for his romantic partner to be "obedient".⁵⁵ Tanya Plibersek subsequently criticised the show for promoting coercive control and the dehumanization of women. Shows of this kind would not be broadcast if viewers did not watch them.

43. It is easy to think of the many small ways in which unfair gendered expectations manifest – for example, in the workplace, women are often still expected to carry the mental and emotional load of management and wellbeing. It is far more likely to be a woman organising the cake and card for someone's birthday.

44. The legal profession is also subject to broader forces affecting women in the workplace. Lawyers are certainly not immune from the gender pay gap, as I have already mentioned in the context of barristers' fees. More generally, the national pay gap sits at 11.5%, and in November 2025, women, on average, earned \$247.20 less than men each week. In 2024 in New South Wales, the Law Society reported that the gender pay gap is evident at all ages of the profession practising as solicitors.⁵⁶ Policies directed at rectifying that gap will be important in ensuring true substantive equality for women in the profession. There is no good reason why women should not be equally remunerated for the same work.

A more inclusive approach to diversity

45. The second point I wish to make invites you to think laterally. Efforts to achieve gender equality in the legal profession should be coupled with efforts to achieve greater diversity across the board. We should consciously include people of other identity groups and experiences in our own lives; we should also seek to understand the role of intersectionality in the legal profession. Individually and as a professional community, we should be just as committed to the success of people of diverse ethnic, cultural and socioeconomic backgrounds, people with diverse gender and sexual identities, and people with disabilities, as we are to the success of women.

46. Across the profession, organisations which are perceived to be committed to diversity and inclusion are better able to recruit and retain highly skilled staff, and enjoy greater

⁵⁵ See *Married at First Sight*, season 13, episode 14.

⁵⁶ *Urbis, 2024 Annual Profile of NSW Solicitors* (2024) at 50.

productivity and performance.⁵⁷ A study by global accounting firm Deloitte found that employees are 80% more likely to assess that they work in a "high-performing organisation" when they feel it is committed to diversity.⁵⁸ This is particularly important to recognise when we know that the intersection of various axes of disadvantage or marginalisation, such as gender and ethnic diversity, still has a marked impact on a lawyer's career progression;⁵⁹ and potentially more so when the number of solicitors born overseas is increasing.⁶⁰

Improving the culture of the legal profession

47. Thirdly, I mentioned earlier a continuing perception of the culture of the legal profession as male dominated, despite the now substantial majority presence of women in the profession. Recently, at the High Court, the Justices heard from staff at the Australian Human Rights Commission about the positive obligation under the *Sex Discrimination Act* to take measures to eliminate sex-based harassment in connection with work. Research shows that members of the legal profession report higher levels of sexual harassment than the national figure for all workplaces, and that this harassment is reported to be perpetrated by more senior work colleagues, in comparison with all workplaces. So, in a Victorian study of the legal profession, 72% of perpetrators were said to be more senior than those they harassed in contrast with a national survey in which only 36% of perpetrators were more senior. In the same study, 61% of women respondents reported experiencing sexual harassment in the past five years in contrast to 41% of women in all workplaces. The success of the legal profession depends importantly on its moral authority. It is a significant concern that behaviour in legal profession workplaces can be compared unfavourably to national averages.

48. The Australian Human Rights Commission posited drivers and risk settings for sex-based harassment in the legal profession including hierarchical structures and power imbalances; gender inequality; long hours and highly competitive workplaces; permissive cultures; and alcohol and expectations to socialise. Based on my experience, these are indeed features of the culture of our legal profession. I believe that we should be considering how to

57 See Law Society of New South Wales, *Diversity and Inclusion in the Legal Profession: The Business Case* (2021) at 5.

58 Deloitte, *Waiter, is there an inclusion in my soup? A new recipe to improve business performance* (2013) at 6, cited in Law Society of New South Wales, *Diversity and Inclusion in the Legal Profession: The Business Case* (2021) at 5.

59 Valizade, Tomlinson et al, "Gender and ethnic intersectionality in solicitors' careers, 1970 to 2016" (2023) *Work, Employment and Society* (in press).

60 In 2021, 29% of all solicitors practising in NSW were born overseas, and come increasingly from Asia: Urbis, *2021 Annual Profile of Solicitors in NSW* (2021) at 45-52.

alter or at least moderate them, to the extent that they are entrenched (for example, by the judicial role). For example, we can question how long hours and highly competitive workplaces contribute to a successful legal practice, and be attentive to the risks of mental ill health and inappropriate behaviour resulting from excessive stress. Also, we should not assume that perpetrators of sex-based harassment, or other unacceptable workplace conduct, are unaffected by our workplace cultures. We have a shared responsibility to maintain and promote psychologically healthy working environments and practices and not to look past misbehaviour if we observe it. My suspicion is that women are more likely to flourish at the commercial bar in a more inclusive legal profession that sheds some of its historical cultural attributes that are, arguably, too macho.

Maintaining gender balance in the judiciary

49. Finally, the question of maintaining the balance of men and women in the judiciary. For today's purposes, I will assume that the judiciary continues to be appointed substantially from within the Bar, and occasionally from commercial law firms. Maintaining the balance will depend upon the judiciary being an attractive option for senior women lawyers. As women succeed as senior counsel and senior commercial litigators, the financial cost of appointment may be unacceptable. Additionally, the attraction of judicial appointment may be reduced as judges and magistrates are pressed to work harder: spending more days in court, with fewer days for judgment writing and targets for speedy disposition of court files. Another risk is the prospect of unfair criticism in the media, which can be demoralising for judges who have little or no capacity to defend themselves. The broader legal community should take an active interest in the working conditions of judges and magistrates whose courts are an important part of the legal workplace.

Conclusion

50. Finally, at the highest level, the legal profession must be vigilant to maintain the values and institutions that justify its existence. Although they have persisted for several years now, global challenges to democratic institutions and the amplification of corrosive and destructive voices have not abated. A diverse and inclusive profession is beneficial for the profession itself and for the people it serves. It strengthens the quality of, and trust in, our legal institutions. And it is a goal the achievement of which can, and should, involve everyone in the profession.
51. That brings me back to this room: what can we do in pursuit of the advancement of women in the legal profession? Lawyers can encourage their firms and organisations to sign up and commit to diversity initiatives, such as the Equitable Briefing Policy; and encourage discussion about briefing more diverse junior. Senior lawyers can mentor students and younger practitioners of all backgrounds, encouraging those in their networks to do so as well. One of the strengths of the legal profession is its collegiality: most senior members of the profession

have strong memories of the support and encouragement they received in earlier days, which remind us of a debt to be paid forward.

52. We can educate ourselves on matters relating to diversity and inclusion, and remain vigilant to the realities of unconscious bias. This includes questioning and dismantling gendered and Western-centric ideas of what constitutes "merit" and "excellence", especially in the context of advocacy and our narrow conceptions of what is "persuasive" or "authoritative".⁶¹ And, of course, it is crucial to remain interested and passionate, including through participation in democratic processes.
53. Finally, the division of domestic responsibilities and their impact on career advancement is an important matter for negotiation. I am optimistic that the openness of young lawyers to questioning historically unequal divisions of labour, and to adopting diverse family structures, will put the legal profession on a firm trajectory for structural change.
54. One hundred years on from women being permitted to practise in every Australian jurisdiction, we have much to celebrate, and more to do. I look forward to what the future holds for the Australian legal profession.

⁶¹ As to which, see, eg, Thornton, "'Otherness' on the Bench: How Merit is Gendered" (2007) 29 *Sydney Law Review* 391; Ragusa and Groves, "Gendered meritocracy? Women senior counsels in Australia's legal profession" (2012) 1 *Australian Journal of Gender and Law* 1; Sommerlad, "The 'social magic' of merit: Diversity, equality and inclusion in the English and Welsh legal profession" (2014) 83 *Fordham Law Review* 2325; Ryan and Pringle, "The Gendered Law Profession: The Perceptions and Experiences of Female Partners and Male Managing Partners" in *Gender and the Professions* (2017).