

WOMEN IN LAW:  
HOW FAR HAVE WE COME, AND WHERE TO FROM HERE?

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**Introduction**

1. Thank you for the invitation to speak this evening on the topic of women in law. It has been a topic of both personal and professional interest to me for almost 40 years now.
  
2. However, it has not been a comfortable topic for study or reflection. To question or discuss the position of women in the legal profession tends to challenge aspects of the structure of the profession and, more broadly, structural aspects of our society. And so, I have noticed a fairly common resistance to the discussion, involving (more or less explicitly) anterior questions designed to discourage the inquiry: would the conversation dare to question or subvert the legal profession as a supposed meritocracy? Are

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\* Justice of the High Court of Australia. I gratefully acknowledge the assistance of my associate, Olivia Ronan, in the preparation of this address, and my associate, Amelia Loughland, for her helpful comments on the draft.

challenges to the status quo merely the unbecoming behaviour of those who cannot compete on a level playing field? Do women wish for positive discrimination, with the implicit corollary that they are not the best candidates for the job? Who is going to protect the interests of the children and aging parents of women who are busily pursuing their own selfish interests?

3. Over 40 years, I have observed very significant improvements in the participation of women in the legal profession. In 1984, when I started my legal studies, no woman had yet been appointed to the High Court of Australia. Fast forward and a majority of the High Court is now comprised of women. Of course, this one data point cannot symbolise the whole of women's contemporary experiences in the legal profession. But now that I have finally been asked to speak about women in the law, and now that I am mature enough no longer to be deflected from the topic, I cannot help but ask myself a different anterior question: should we still be talking about women in the law? I hope this evening to interrogate that proposition and to conclude that the organisers of this talk were more than justified in posing the question.

4. In the Western intellectual tradition, the personification of justice as a woman goes back at least as far as the Ancient Egyptian

goddess Maat<sup>1</sup>. In Greek mythology, Themis<sup>2</sup>, known for her clear-sightedness and as the ruler over divine justice, and Dike<sup>3</sup>, the personification of human justice and moral order, were goddesses. In ancient Rome, Justitia, one of the four Virtues, was depicted holding scales, representing impartiality, and a sword, symbolising power<sup>4</sup>. The idea of "Lady Justice" is still invoked in sculptures adorning courts across the world<sup>5</sup>.

5. 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"<sup>6</sup> in the Australian legal profession.

6. Only 100 years ago, the Western Australian Parliament passed the *Women's Legal Status Act 1923* (WA). The Bill which became that Act, poetically, was introduced into Parliament by Edith Cowan, the first female member of Parliament in Western Australia. With the

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1 See, eg, Morenz, *Egyptian Religion* (1973) at 273.

2 The first recorded appearance of Justice as a divine personage in Hesiod's *Theogony*: at 901-906.

3 The daughter of Themis: Hesiod, *Theogony* at 901-903.

4 See Sutherland-Smith, "Justice unmasked: A semiotic analysis of Justitia" [2011] 185 *Semiotica*.

5 See de Ville, "Mythology and the Images of Justice" (2011) 23 *Law & Literature* 324.

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

passage of the Women's Legal Status Act, this year marks a century of women being permitted to practise law in every Australian State and Territory.

7. I will proceed in three parts, each of which asks a question: where did we start, how far have we come, and where to next? The first two sections are descriptive, and the third is normative.

### **Where did we start?**

8. I will begin with the stories of four Australian<sup>7</sup> women known, in part, for their being the "first" to achieve various markers of inclusion in the legal profession. While their stories have been well-documented, they are worth retelling.
9. By the turn of the twentieth century, women had begun to enrol in law schools in anticipation of legislative reform which would permit them to practice<sup>8</sup>. One such woman was Flos Greig, who upon her enrolment in 1897 was the first woman to attend Melbourne Law School. By the time of her graduation, she had been

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7 For histories of the participation of women in the legal profession abroad, see, eg, Drachman, *Sisters in Law: Women Lawyers in Modern American History* (1998); Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* (1986); Mossman, *The First Women Lawyers* (2006); Mossman, "The Law as a Profession for Women: A Century of Progress?" (2009) 30 *Australian Feminist Law Journal* 131.

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

a driving force behind what was commonly known as the "Flos Greig Enabling Bill" to permit women to be admitted to practice. The evocative *Women's Disabilities Removal Act 1903* (Vic) entered into force five days after her graduation from Melbourne Law School<sup>9</sup> and, on 1 August 1905, she became the first woman in Australia to be admitted to the legal profession.

10. In 1901, writing in the *Commonwealth Law Review*, Flos Greig noted that "[w]e fought hard enough for suffrage. We know what we wanted it for, and what we intend to effect now we have got it, but to be successful we will require knowledge"<sup>10</sup>. She also reported that as women entered a number of different professions, there had been no "major catastrophes"<sup>11</sup>; but despite this, "[t]he first women lawyers are hardly likely to make fortunes. The pioneer never does"<sup>12</sup>.

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

10 Greig, "The Law as a Profession for Women" (1909) 6 *Commonwealth Law Review* 145 at 148-149. Ironically, the editor of the *Review* explained, in an introduction to Greig's article, that "the words of a pioneer on his work" were useful in giving the first impressions of a "country hitherto unknown to the pioneer": Mossman, "'The Law as a Profession for Women': A Century of Progress?" (2009) 30 *Australian Feminist Law Journal* 131 at 132.

11 Greig, "The Law as a Profession for Women" (1909) 6 *Commonwealth Law Review* 145 at 146.

12 Greig, "The Law as a Profession for Women" (1909) 6 *Commonwealth Law Review* 145 at 154.

11. Following Victoria, women became eligible to practise law across the remaining Australian jurisdictions between 1904 and 1923<sup>13</sup>. And so it was that women were permitted into the *profession* – that term having historically been reserved elsewhere in the Commonwealth for occupations which women were not permitted to perform<sup>14</sup>.
12. Other women were not so fortunate in the timing of their transition from law school to practice: for Ada Evans at the University of Sydney, who became the country's first female law graduate in 1902, the delay in the necessary legislative developments "effectively excluded her from legal practice"<sup>15</sup>.
13. Ada Evans had initially been refused registration as a student-at-law in NSW on the ground that there was no precedent. And of course there was no precedent: the law of NSW at the time was, as former High Court Justice Mary Gaudron once put it, "testimony to the creative genius of the common law as administered by men"<sup>16</sup>,

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13 *Legal Practitioners Act 1904* (Tas); *Legal Practitioners Act 1905* (Qld); *Female Law Practitioners Act 1911* (SA); *Women's Legal Status Act 1918* (NSW); *Women's Legal Status Act 1923* (WA).

14 Gidney and Millar, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (1994) at 239, cited in Mossman, "'The Law as a Profession for Women': A Century of Progress?" (2009) 30 *Australian Feminist Law Journal* 131 at 134.

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

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

that is to say that women were not considered "persons" under the relevant statute<sup>17</sup>. Her eventual enrolment was only made possible because the Dean, Professor Pitt Cobbett, was travelling abroad, and the acting Dean, Professor Jethro Brown, was comparatively sympathetic to the causes of women's education<sup>18</sup>. Once Professor Cobbett returned, there was a "series of doors slamming, chairs banging on floors and bells ringing"<sup>19</sup> and he took it upon himself to tell Ada Evans that she did not possess the "physique" for the practise of law. He suggested instead that she take up medicine<sup>20</sup>. But nevertheless, she persisted with her legal studies.

14. Unfortunately, however, it was not until almost 20 years after her graduation – 1921 – that Ada Evans was able to be admitted to practice, after she had been instrumental in the campaign for legislative development. And then, despite being offered work, she never practised: Ada Evans took the view that so much time had elapsed since her studies that she was incapable, and she did not wish "women's standing in the profession to be undermined by a

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17 *Ex parte Ogden* (1893) 16 NSWLR 86. See also, eg, *In re Edith Haynes* (1904) 6 WAR 209.

18 See, eg, Kirk, "Portia's Place: Australia's First Women Lawyers" (1995) 1 *Australian Journal of Legal History* 75 at 76.

19 Kirk, "Portia's Place: Australia's First Women Lawyers" (1995) 1 *Australian Journal of Legal History* 75 at 76.

20 Gaudron, "Speech for the Women Lawyers Association of New South Wales 50th Anniversary Gala" (Remarks delivered at Sydney, 13 June 2002), citing Bennett (ed), *A History of the NSW Bar* (1969).

show of incompetence"<sup>21</sup>. We will never know if this decision reflected good judgment or the sadly common feminine trait of self-effacement and perhaps a touch of imposter's syndrome.

15. Turning to South Australia, Dame Roma Mitchell was one of the first three women to enter the profession in that State after the passage of the *Female Law Practitioners Act 1911* (SA). From there, Dame Roma became the first to appear in the High Court, in 1938<sup>22</sup>; the first to address the Court in the 1960s<sup>23</sup>; the first woman in Australia appointed Queens Counsel in 1962 (almost 360 years after the development of the institution of silk<sup>24</sup>); and the first female judicial officer in Australia by her appointment to the Supreme Court of South Australia in 1965 (and she remained the only woman on

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21 See Gaudron, "Australian Women Lawyers" (Speech delivered at Melbourne, 1997); McPaul, "A Woman Pioneer" (1948) 22 *Australian Law Journal* 1 at 2.

22 *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-female 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.

23 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.

24 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.



that Court at her retirement from judicial office some 18 years later). She was also the first female university chancellor in Australia at the University of Adelaide; and the first female State Governor<sup>25</sup>. I gratefully adopt former Justice Kirby's words from some 25 years ago: Dame Roma's astonishing career is a "beacon of hope and encouragement"<sup>26</sup>.

16. By comparison, the presence of women in the academy came much later. The first woman to become a Professor in Australia, Enid Campbell, was only appointed to a chair at Monash University in 1967<sup>27</sup>, and only two more were appointed over the next 20 years<sup>28</sup>. Professor Campbell became a vocal and influential scholar, particularly with respect to rights and freedoms, administrative law, parliamentary privilege, and the Australian judiciary.

17. It is difficult to imagine, in 2023, the difficulties which these women must have faced and, at least at times, how lonely their journeys must have been. For that reason, it is important that their

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<sup>25</sup> See Magarey and Round, *Roma the First: A biography of Dame Roma Mitchell* (2007) at 335-336.

<sup>26</sup> Kirby, "Women Lawyers - Making a Difference" (Speech delivered at the Women Lawyers' Association of NSW, Sydney, 18 June 1997).

<sup>27</sup> Groves, "Obituary: Enid Mona Campbell, AC, OBE 1932-2010" (2010) 63 *AIAL Forum* 1 at 1.

<sup>28</sup> For a history of women in the legal academy, see Thornton (ed), *Gender and Careers in the Legal Academy* (Hart Publishing, 2021). See also Grimshaw and Francis, "Academic women and research leadership in twentieth-century Australia" in *Diversity in Leadership* (2014) at 207.

stories be considered in context. Flos Greig, Ada Evans and Dame Roma, in particular, grew up in a world dominated by the culture and morality of the British empire, where the spectre of the "angel in the house" loomed large. That concept, drawn from Coventry Patmore's poem of the same name<sup>29</sup>, described the essential characteristics of the idealised woman (and wife) of Victorian England. 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"<sup>30</sup>. The ideal Victorian woman, then, was not seised of a "mind or wish of her own"<sup>31</sup>, let alone desirous of a career in the law. American feminist scholar Nel Noddings described her as "infantile, weak and mindless"<sup>32</sup>.

18. At the turn of the twentieth century, women were not only swimming against the oppressive tide of cultural expectations of Victorian femininity; they were also seeking to join the profession against a backdrop of centuries of so-called "scholarship" speaking of the inferiority of women as intellectual beings<sup>33</sup>. Aristotle posited

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

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

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

32 Noddings, *Women and Evil* (1989) at 59.

33 See, eg, Spencer, *The Principles of Biology* (1867), vol 2 at 512-513, cited in Thornton, "Who cares? The conundrum for gender

that women are possessed of an imperfect deliberative faculty<sup>34</sup>, and Rousseau and Freud theorised that women are incapable of developing a sense of justice<sup>35</sup>.

19. In the early twentieth 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"<sup>36</sup>. In 2007, Professor Margaret Thornton argued that "[t]he view that the difference and inferiority of women is grounded *in nature* [has been] entrenched within the Western intellectual tradition". According to Professor Thornton, this idea had "not evaporated with the cautious letting in of women associated with Second Wave feminism" from the early 1960s<sup>37</sup>.

20. And so it was that in 1911, a South Australian Member of the Legislative Council considered unpersuasive the analogy that women

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equality in legal practice" (2020) 43 *UNSW Law Journal* 1473 at 1473.

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

35 See Freud, "Some Psychological Consequences of the Anatomical Distinction between the Sexes" in Strachey (d), *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.

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

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

were already permitted to practise as medical doctors: there was no equivalent in law for the fact that "a lady doctor attended to ladies only"<sup>38</sup>. "Women ... often [ask] for many things that ought not to be granted them."<sup>39</sup> More supportively (I choose to think), another South Australian simply remarked that "[l]ike chips in porridge, they won't do much harm"<sup>40</sup>. In 1923, one Member of the Western Australian Parliament doubted that it was a "step in the right direction to try to bring about equality of the sexes", given women's "important functions" as "custodians of our race"<sup>41</sup>.

21. That sense of resistance against the very notion of the woman lawyer held by some men persisted well into the last century. 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

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38 South Australia, Legislative Council, *Parliamentary Debates* (Hansard), 16 November 1911 at 536 (Hon J Lewis), cited in Kirk, "Portia's Place: Australia's First Women Lawyers" (1995) 1 *Australian Journal of Legal History* 75 at 83.

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

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

41 Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 7 November 1923 at 1378 (Hon C G Latham), cited in Naylor, "Women in the Law" (1994) 21 *Brief* 6 at 6. See also Kirk, "Portia's Place: Australia's First Women Lawyers" (1995) 1 *Australian Journal of Legal History* 75 at 84.

gender, and not merit<sup>42</sup>. One senior male member of the profession notoriously described the appointments of women to judicial office as the result of "queue-jumping" or prone to "undermin[e] the intellectual rigour of the state judiciary"<sup>43</sup> – statements for which he later apologised. Also in the 1990s, and after the invention of the speaker phone, I had the pleasure of hearing a solicitor say to a barrister proposing me as his junior: "This is an important matter for our client, and we don't want a woman involved."

### **How far have we come?**

#### *Women in the profession: Some numbers*

22. So how far we have come since these pioneering women entered the profession? Women like Flos Greig, Ada Evans, Dame Roma Mitchell and Enid Campbell, memorialised as they are now, paved the way for massive (and to them, I'm sure, completely unimaginable) growth in the participation of women across all corners of the profession. As Chief Justice Kiefel put it mid-last year

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42 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.

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

in a 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."<sup>44</sup> To illustrate this, knowing full well that I sit in a room of lawyers, not renowned for our mathematical prowess, permit me to share some of the numbers.

23. Starting with present company: women reportedly make up more than 60% of law students and graduates. At other ranks of the academy, whereas in 1994, roughly 39% of legal academics in Australia were women, by 2018, that number had risen to approximately 51%<sup>45</sup>. Women are also increasingly likely to have obtained doctorate qualifications, gained permanent contracts, and have been promoted to senior positions in universities<sup>46</sup>.

24. By October 2020, 53% of practising solicitors nationally were female<sup>47</sup>. The number is higher still in NSW: at 30 June 2022,

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44 Hon Chief Justice Kiefel, "Yesterday, today and tomorrow - a trend towards equality?" (Remarks delivered at the Australian Women Lawyers' Conference, Brisbane, 6 August 2022) at 9.

45 Thornton, *Dissonance and Distrust* (1996); Melville and Barrow, "Persistence Despite Change: The Academic Gender Gap in Australian Law Schools" (2022) 47 *Law & Social Inquiry* 607.

46 Melville and Barrow, "Persistence Despite Change: The Academic Gender Gap in Australian Law Schools" (2022) 47 *Law & Social Inquiry* 607 at 626.

47 Urbis, *2020 National Profile of Solicitors* (2020) at 8, available at <<https://www.qlsproctor.com.au/wp-content/uploads/2021/07/2020-National-Profile-of-Solicitors-Report.pdf>> .

women comprised 54% of the approximately 39,000 solicitors with practising certificates<sup>48</sup>. Between 1997 and 2021, there was an exponentially higher growth rate of female solicitors than male solicitors: the number of female solicitors grew more than four-fold, whereas the number of male solicitors grew less than two-fold<sup>49</sup>. In July 2022, women comprised 32.1% of the partnerships of Australia's largest law firms<sup>50</sup>.

25. At the Bar, on average between the States and Territories, women comprise roughly 27.7% of barristers, and 15% of Senior or King's Counsel<sup>51</sup>. Here in NSW, women comprise 24.6% of practising barristers, and only 13.9% of Senior Counsel<sup>52</sup>. While

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48 Law Society of New South Wales, *Practising Solicitor Statistics* (2022) available at <<https://www.lawsociety.com.au/sites/default/files/2022-11/202206%20Practising%20Solicitor%20Statistics%20-%20Jun%202022.pdf>> .

49 Law Society of New South Wales, *Annual Profile of Solicitors in NSW* (2021) at 6 available at <<https://www.lawsociety.com.au/sites/default/files/2022-06/2021%20Annual%20Profile%20of%20Solicitors%20in%20NSW.pdf>> .

50 Pelly, "Female lawyers to wait another decade for partner equality", *Australian Financial Review* (7 July 2022).

51 Data compiled from State and Territory Bar Association websites on 17 February 2023. These figures are inevitably imperfect: many jurisdictions do not separate out interstate members of the Bar Associations, such that many members of the Bar appear in multiple jurisdictions. This also contrasts with recent census data: 2020 Census Data suggests that 38% of people who self-reported as barristers were women. This is likely to include people who have eg. passed the Bar exam but do not have a practising certificate, or perhaps have misreported.

52 New South Wales Bar Association, *Statistics* (2022) available at <<https://nswbar.asn.au/the-bar-association/statistics>> .

those numbers remain comparatively low to other parts of the profession, I am told that in the High Court's Archives there is a set of Robert Menzies' personal diaries, and in the back of one volume he has personally recorded the names of each of the members of the Victorian Bar in 1918 – just 59 of them, and of course, all men.

26. And then, to the judiciary. As many of you will know, with the appointment of Justice Jayne Jagot in October 2022, the High Court is now comprised of a majority female Justices, under the Court's first female Chief Justice. Consistently with that feat, the growth in the appointment of women to judicial office across Australia has been massive. In 2012, women made up 10.2% of judicial officers nationally. By June 2022, that number had risen to 43.1%, comprising 39.4% of superior courts and 45.9% of inferior courts<sup>53</sup>.

*Women in the profession: The bigger picture*

27. But, of course, that is only part of the picture of women's place in the profession. In the academy, women remain underrepresented at the highest levels: in 2018, 58% of male legal academics were appointed at the associate professor or professor

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<sup>53</sup> Australian Institute of Judicial Administration, *AJJA Judicial Gender Statistics* (2022) available at <<https://aija.org.au/wp-content/uploads/2022/09/2022-Judicial-Gender-Statistics-2022-09-14.pdf>> .



level, compared with 42.5% of female legal academics<sup>54</sup>. A 2019 study also revealed that, between 2015 and 2017, just 9% of academic citations in High Court judgments were to works by female academics<sup>55</sup>. (With that said, the broader picture of academic citations of work authored by women appears to be better<sup>56</sup>, at least overseas<sup>57</sup>.) Women are also disproportionately affected by the increasing casualisation of the academic workforce<sup>58</sup>, and women make up a disproportionate amount of teaching-only or teaching-focused roles<sup>59</sup>.

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54 Melville and Barrow, "Persistence Despite Change: The Academic Gender Gap in Australian Law Schools" (2022) 47 *Law & Social Inquiry* 607 at 618.

55 Barnett, "Citation as a measure of 'impact': Female legal academics at a disadvantage?" (2019) 44 *Alternative Law Journal* 267.

56 Though see Smyth, "Who Publishes in Australia's Top Law Journals?" (2012) 35 *University of New South Wales Law Journal* 203.

57 See, eg, Cotropia and Petherbridge, "Gender disparity in law review citation rates" (2018) 59 *William & Mary Law Review* 771.

58 Melville and Barrow, "Persistence Despite Change: The Academic Gender Gap in Australian Law Schools" (2022) 47 *Law & Social Inquiry* 607 at 614-615; see also, eg, Lafferty and Fleming, "The Restructuring of Academic Work in Australia: Power, Management and Gender" (2000) *British Journal of Sociology* 257; May, Strachan, and Peetz, "Workforce Development and Renewal in Australian Universities and the Management of Casual Academic Staff" (2013) 10 *Journal of University Teaching & Learning Practice* 1.

59 Marchant and Wallace, "Sixteen Years of Change for Australian Female Academics: Progress or Segmentation" (2013) 55 *Australian Universities' Review* 60 at 64, cited in Melville and Barrow, "Persistence Despite Change: The Academic Gender

28. In other areas of the profession, despite the massive growth in women as a proportion of practising solicitors, fewer than a third of women in private practice lead law firms—29% are partners or principals—compared to 54% of men<sup>60</sup>.

29. At the Bar, the 2019-2020 reporting period for the Law Council of Australia found that 31% of briefs by reporting entities went to female barristers, exceeding the target of the 2016 Equitable Briefing Policy by one percentage point<sup>61</sup>. Whilst this was a marked improvement from the 20% of briefs that went to women in 2016-17, the gender pay gap remains: women only earned 23% of fees<sup>62</sup>. Additionally, reporting entities under the Policy were more likely to brief junior women, rather than their senior counterparts<sup>63</sup>.

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Gap in Australian Law Schools" (2022) 47 *Law & Social Inquiry* 607 at 615.

<sup>60</sup> Urbis, *2021 Annual Profile of Solicitors in NSW* (2021) at 7, available at <<https://www.lawsociety.com.au/sites/default/files/2022-06/2021%20Annual%20Profile%20of%20Solicitors%20in%20NSW.pdf>>.

<sup>61</sup> Law Council of Australia, *Equitable Briefing Policy Annual Report: 2019-2020 Financial Year* (2021) at 6.

<sup>62</sup> Law Council of Australia, *Equitable Briefing Policy Annual Report: 2019-2020 Financial Year* (2021) at 6.

<sup>63</sup> Law Council of Australia, *Equitable Briefing Policy Annual Report: 2019-2020 Financial Year* (2021) at 6-7.

30. From my perspective, these disparities are particularly evident in the numbers of women appearing in the High Court<sup>64</sup>. In the matters in which judgment was delivered by five or more Justices of the Court last year, women comprised 22% of appearances, and only 15% of counsel addressing the Court in oral submissions. Three prominent male senior counsel from the NSW Bar addressed the Court more times than all women combined.

31. With all that said, numbers are, of course, notoriously unfeeling. They fail to capture the everyday interactions which can accumulate to make women's experience of the profession quite different from that of their male counterparts. In that regard, the general attrition of women from the profession remains high, and re-engagement for women who step away from the profession for a period of time remains difficult. In 2014, the Law Council's National Attrition and Re-Engagement Study identified several key drivers for attrition from legal practice: differing experiences of career development between genders; the male-dominated culture of the profession; unconscious bias; sexual harassment and discrimination;

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<sup>64</sup> I note that other Australian courts have begun to publish the proportion of appearances by women in those courts. For example, the Victorian Court of Appeal publishes statistics of counsel appearances by gender for criminal and civil proceedings on a quarterly basis: Supreme Court of Victoria, *Court of Appeal Data on Gender of Counsel* (2023) available at <<https://www.supremecourt.vic.gov.au/areas/court-of-appeal/court-of-appeal-data-on-gender-of-counsel>> .

and inflexible working conditions<sup>65</sup>. In the context of our broader culture, all of these drivers tend to affect women disproportionately to men.

32. Women also continue to face what those of us in this room might fairly consider to be decidedly Victorian-era assumptions about women's roles in the workplace: for example, in my associate's first week as a law graduate, while seated between two male graduates in a bay of graduate workstations, she was asked by a partner 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 programme.

### **Where to from here?**

33. The point of this is not to rattle off statistics and to assume that they tell the full story: nor is it to dwell negatively on how far women might still have to go<sup>66</sup>. 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

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<sup>65</sup> 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).

<sup>66</sup> See Hon Justice Perry, "Women at the Bar: Aspirations and Inspirations" (Speech delivered at Women Barristers Forum, Sydney, 5 April 2014).

(women and otherwise) dedicated to their inclusion and success, are all cause for celebration.

34. That leads me to my final question for this evening: where to from here? In asking that question, I wish to make two points.

*Thinking about substantive equality*

35. First, it is important to look beyond numerical equality and focus on substantive inclusion for women in the profession. As former, and first female 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<sup>67</sup>. The statistics I have shared this evening indicate that the fight for women's inclusion in the legal profession is not over.

36. Beyond the numbers, though, it crucial to effect structural change if we accept substantive gender equality in the legal profession as a worthwhile goal<sup>68</sup>.

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<sup>67</sup> Coade, "Legal Luminaries Shed Light on Sexism in the Profession", *Lawyers Weekly*, 16 October 2017 <<https://www.lawyersweekly.com.au/biglaw/22079-legal-luminaries-shed-light-on-sexism-in-the-profession>>.

<sup>68</sup> Melville and Barrow, "Persistence Despite Change: The Academic Gender Gap in Australian Law Schools" (2022) 47 *Law & Social Inquiry* 607 at 608, citing Sommerlad, "The Myth of Feminisation: Women and Cultural Change in the Legal Profession" (1994) 1 *International Journal of the Legal*

37. In particular, caring responsibilities for children and family members, as well as the maintenance of a household, overwhelmingly remain a woman's problem<sup>69</sup>. Pregnancy and childcare "have continued to be persistent sources of less favourable treatment for women in the workplace"<sup>70</sup>, and there remains a "marked gap between the rhetoric and reality" of workplaces in the legal profession supporting flexible work<sup>71</sup>. These cultural realities must be addressed in order 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<sup>72</sup>. Putting aside more formal childcare, it is easy to think of the many small ways in which these 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

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*Profession* 31 at 31. See also Bolton and Muzio, "Can't Live with 'Em; Can't Live without 'Em: Gendered Segmentation in the Legal Profession" (2007) 41 *Sociology* 47; Witz, *Professions and Patriarchy* (1992) at 48.

<sup>69</sup> See, eg, Crabb, *The Wife Drought* (2015).

<sup>70</sup> Thornton, "Who Cares? The Conundrum for Gender Equality in Legal Practice" (2022) 43 *UNSW Law Journal* 1473 at 1478, citing Law Council of Australia, *National Attrition and Re-engagement Study* (2014) at 23-24.

<sup>71</sup> Thornton, "Who cares? The conundrum for gender equality in legal practice" (2020) 43 *UNSW Law Journal* 1473 at 1480.

<sup>72</sup> See, eg, Dixon et al, *Un(Taxing) Child-care: Boosting Choice and Labour Supply through Subsidised & Tax-Deductible Child-care in Australia* (UNSW New Economic Policy Initiative Report, 2019).

organising the cake and card for someone's birthday. I believe that the goal of substantive equality is not merely for the benefit of women lawyers. Rather, it promises wider societal benefits: for our children, our families, our psychological wellbeing, and for democratic participation<sup>73</sup>. However, many people, and especially male lawyers and their families, remain convinced that their interests lie with the status quo.

38. 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 14.1%, and in May 2022, women, on average, earned \$263.90 less than men each week<sup>74</sup>. In 2022, research published by KPMG and prepared with the Diversity Council Australia and Workplace Gender Equality Agency revealed that the gender pay gap in Australia is equivalent to \$966 million per week, or \$51.8 billion per year<sup>75</sup>. And in NSW, in 2021, the Law Society reported that the gender pay gap

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73 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.

74 Workplace Gender Equality Agency, *Gender pay gap data* (2023) available at <<https://www.wgea.gov.au/pay-and-gender/gender-pay-gap-data>>.

75 KPMG, *She's Price(d)less: The economics of the gender pay gap* (2022) at 59, available at <[https://www.dca.org.au/sites/default/files/report\\_she's\\_pricedless\\_2022.pdf](https://www.dca.org.au/sites/default/files/report_she's_pricedless_2022.pdf)>.

is evident at all ages of the profession practising as solicitors<sup>76</sup>. Policies directed at rectifying that gap will also be important in ensuring true substantive equality for women in the profession, because while Flos Greig was perhaps right to say that the female "pioneers" couldn't make a fortune - there is no good reason why women should not be equally remunerated for the same work.

*A more inclusive approach to diversity*

39. The second point I wish to make invites you to think laterally. It is to say that 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 a person's experience in the legal profession. Put another way, individually and as a professional community, lawyers should be just as committed to the success of people of diverse ethnic and cultural backgrounds, socioeconomic backgrounds, disabilities, genders, and sexualities as it is to the success of women. Women's progression and challenges have important lessons to be applied for more marginalised groups in our community: women can often empathise with the experience of disadvantage and discrimination and are well-placed to appreciate

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<sup>76</sup> Urbis, *2021 Annual Profile of Solicitors in NSW* (2021) at 45-52, available at <<https://www.lawsociety.com.au/sites/default/files/2022-06/2021%20Annual%20Profile%20of%20Solicitors%20in%20NSW.pdf>>.



the benefits of diversity for broader society, and not just themselves as individuals.

40. Why exactly do we talk about diversity in the profession, and what is diversity in this context? In the context of the judiciary, much ink has been spilled on the topic of why fixing the so-called "diversity deficit" is important<sup>77</sup>.
41. At its most base, there is the symbolic justification, which treats a court which is representative of the constituent parts of the community it serves as an inherent good<sup>78</sup>. The same might be said of diversity in the holders of positions of power elsewhere in the profession.
42. Symbolism also has an instrumental benefit: from a feminist perspective, women judges and high-profile members of the profession are able to "send a message to women of different backgrounds about the degree to which governmental power is open

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77 See JUSTICE, *Increasing Judicial Diversity* (Report, April 2017); Opeskin, "Dismantling the Diversity Deficit: Towards a More Inclusive Australian Judiciary" in Appleby and Lynch (eds), *The Judge, The Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (2020).

78 See Chief Justice McLachlin (Remarks delivered at Association of Women Barristers Seminar, London, 2 July 2003) cited in Lady Hale, "Making a Difference? Why We Need a More Diverse Judiciary" (2005) 56 *Northern Ireland Legal Quarterly* 281 at 285-286.

to them and designed to serve their interests"<sup>79</sup>. For women appearing in those courts, or working with those women, it can have "very real additional benefits when it comes to their own sense of belonging in the profession, as well as to the way in which they are perceived by male [practitioners]"<sup>80</sup>.

43. Relatedly, a diverse profession is beneficial to the perceived legitimacy of the institution in the eyes of the public. Looking again to the judiciary, as former Chief Justice Bathurst of the NSW Supreme Court recently observed, it is well-documented that marginalised and minority groups are less trusting of courts<sup>81</sup>. Particularly given the "legacy of fear, suspicion and distrust" that governs many Aboriginal and Torres Strait Islander peoples' negative views of the justice system<sup>82</sup>, improvements to the diversity of the judiciary will likely assist in challenging perceptions that the judiciary

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79 Dixon, "Female Justices, Feminism, and the Politics of Judicial Appointment: A Re-Examination" (2010) 21 *Yale Journal of Law and Feminism* 297 at 334, citing Nussbaum, "Op-Ed: Women in Office Break Stereotypes", *Philadelphia Inquirer* (24 November 2008) at A10.

80 Dixon, "Female Justices, Feminism, and the Politics of Judicial Appointment: A Re-Examination" (2010) 21 *Yale Journal of Law and Feminism* 297 at 334. See also Kiefel and Saunders, "Concepts of Representation in Their Application to the Judiciary in Australia" in *Fair Reflection of Society in Judicial Systems: A Comparative Study* (2015) 41 at 60.

81 See Hon Chief Justice Bathurst, "Trust in the judiciary" (Opening of Law Term Address, 3 February 2021) at [59] and the sources cited at fn 57.

82 Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* (Report, February 2012) at 23, 40.

"does not serve the interests of all"<sup>83</sup>. Trust in the legal profession as an institution will increase where there is a belief that judges and practitioners "represent social groups to which they feel they belong"<sup>84</sup> and are less "alien"<sup>85</sup>.

44. This might also bear upon the capacity of the profession and the justice system to understand, and respond to, problems that demand an intersectional approach, such as the particular difficulties faced by lawyers with disabilities or female children growing up with social disadvantage.

45. A more vexed area of debate about diversity in the judiciary concerns its impacts (if any) on judicial decisions. It may not be correct<sup>86</sup> nor appropriate<sup>87</sup> to assume that a judge's gender, race,

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83 Hon Chief Justice Bathurst, "Trust in the judiciary" (Opening of Law Term Address, 3 February 2021) at [72].

84 Bradford, Jackson and Hough, "Trust in Justice" in Uslaner (ed), *The Oxford Handbook of Social and Political Trust* (2018) at 14.

85 Chief Justice McLachlin (Remarks delivered at Association of Women Barristers Seminar, London, 2 July 2003) cited in Lady Hale, "Making a Difference? Why We Need a More Diverse Judiciary" (2005) 56 *Northern Ireland Legal Quarterly* 281 at 285. See also Kiefel and Saunders, "Concepts of Representation in Their Application to the Judiciary in Australia" in *Fair Reflection of Society in Judicial Systems: A Comparative Study* (2015) 41 at 60.

86 Dixon, "Female Justices, Feminism, and the Politics of Judicial Appointment: A Re-Examination" (2010) 21 *Yale Journal of Law and Feminism* 297.

87 Kiefel and Saunders, "Concepts of Representation in Their Application to the Judiciary in Australia" in *Fair Reflection of Society in Judicial Systems: A Comparative Study* (2015) 41 at 60.

sexuality or any other personal trait will necessarily bear upon their decision-making. Upon appointment, a judge takes an oath to act "according to law"<sup>88</sup> and to act "without fear or favour, affection or ill-will"<sup>89</sup>: they are a judge first, and only second a woman (or a person of colour, a transgender person, or a person with disability)<sup>90</sup>. Certainly, we should not *expect* a person to decide a matter differently on the basis of any such trait<sup>91</sup>, especially given the homogeneity in legal thinking which is encouraged by a standardised legal education and the strictures of decided precedent.

46. However, it is inevitable that a person's experience in life will impact their perspective and their approach to a legal problem, falling far short of impermissible judicial law reform or deviation from their judicial oath. As Benjamin Cardozo put it in 1921<sup>92</sup>:

"The eccentricities of judges balance one another. One judge looks at problems from the point of view of history, another from that of philosophy, another from that of social utility, one is a formalist, another a

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88 Kiefel and Saunders, "Concepts of Representation in Their Application to the Judiciary in Australia" in *Fair Reflection of Society in Judicial Systems: A Comparative Study* (2015) 41 at 60.

89 See, eg, *High Court of Australia Act 1976* (Cth) s 11.

90 See Lady Hale, "Making a Difference? Why We Need a More Diverse Judiciary" (2005) 56 *Northern Ireland Legal Quarterly* 281 at 286.

91 See Hale and Malleson, "Justifying Gender Equality on the Bench: Why Difference Won't Do" (2003) 11 *Feminist Legal Studies* 1.

92 Cardozo, *The Nature of the Judicial Process* (1961) at 177, cited in Lady Hale (2005) at 292.

latitudinarian, one is timorous of change, another dissatisfied with the present; out of the attrition of diverse minds there is beaten something which has a constancy and uniformity and average value greater than its component elements."

47. As an example, Baroness Brenda Hale, the first female member of the House of Lords and the first female president of the United Kingdom Supreme Court, spoke in 2005 of an instance in which her experience as a woman was significant to her judgment: in *Parkinson v St James and Seacroft University Hospital NHS Trust*<sup>93</sup>. The case raised a question of so-called "wrongful birth", involving the scope of a doctor's liability in negligently failing to sterilise a man or woman who later conceives a child. Lady Hale "tried to put into words the experience of bearing and rearing a child from the woman's point of view", rather than simply painting the problem in financial terms: she "tried to reframe the damage in terms, first of the invasion of the mother's right to bodily integrity and autonomy, and second in terms of the responsibility which having any child entails 24/7 until the child is old enough to fend for herself"<sup>94</sup>.

48. The importance of diverse perspectives and life experiences to the quality and functioning of the justice system extends far beyond the Bench. At the societal level, psychological studies have shown

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93 [2001] EWCA Civ 530; [2002] QB 266.

94 Lady Hale, "Making a Difference? Why We Need a More Diverse Judiciary" (2005) 56 *Northern Ireland Legal Quarterly* 281 at 290.

that exposure to people from marginalised groups can "have a substantial capacity to curtail implicit bias"<sup>95</sup>.

49. At the tertiary level, studies have indicated that the formation of law graduates with "an awareness and concern about structural inequalities" would have a marked improvement on "the quality of justice, give the public greater confidence in the legal system, and improve the delivery of legal services to all clients"<sup>96</sup>. In the litigation context, diversity of perspectives can also be achieved through the involvement of juries, expert witnesses, public interest or sectional interest groups appearing as *amicus curiae*, and in the role that laypeople play on administrative tribunals<sup>97</sup>.

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95 Dixon (2010) at 335; see Lowery and Hardin, *Social Influence effects on Automatic Racial Prejudice* (2001) 81 *Journal of Personality and Social Psychology* 842; Jolls, *Antidiscrimination Law's Effects on Implicit Bias* in Gulati and Yelnosky (eds) *NYU Selected Essays on Labor and employment Law: Behavioral Analysis of Workplace Discrimination* 69.

96 Melville and Barrow, "Persistence Despite Change: The Academic Gender Gap in Australian Law Schools" (2022) 47 *Law & Social Inquiry* 607 at 610; see Zenoff and Lorio, "What We Know, What We Think We Know and What We Don't Know about Women Law Professors" (1983) 25 *Arizona Law Review* 896; Collier, "The Changing University and the (Legal) Academic Career: Rethinking the Relationship between Women, Men, and the 'Private Life' of the Law School" (2002) 22 *Legal Studies* 1; West, "Women in the Legal Academy: A Brief History of Feminist Legal Theory" (2018) 87 *Fordham Law Review* 977.

97 Kiefel and Saunders, "Concepts of Representation in Their Application to the Judiciary in Australia" in *Fair Reflection of Society in Judicial Systems: A Comparative Study* (2015) 41 at 53-58.

50. But even putting aside the perspectives that might be brought to individual matters, as former Chief Justice Beverley McLachlin, the first female Chief Justice of Canada, once remarked, a gender-diverse judiciary is a utilitarian goal: "[s]imply put, it represents a sound use of human resources ... modern societies cannot afford to lose the intellectual power and energy of half the population"<sup>98</sup>.

51. 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 productivity and performance<sup>99</sup>. 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<sup>100</sup>. 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<sup>101</sup>; and potentially

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98 Chief Justice McLachlin (Remarks delivered at Association of Women Barristers Seminar, London, 2 July 2003) cited in Lady Hale, "Making a Difference? Why We Need a More Diverse Judiciary" (2005) 56 *Northern Ireland Legal Quarterly* 281 at 286.

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

100 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.

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

more so when the number of solicitors born overseas is increasing<sup>102</sup>.

52. Many of the arguments in support of a more diverse judiciary apply more broadly to the legal profession, and it is important that we approach the concept of "diversity" in the profession in an inclusive and intersectional way which has regard to the economic and cultural forces at work, as opposed to simply "individualising" the problem of equality.

53. And so, for example, equally encouraging as the current gender composition of the Court on which I sit is that, in May 2022, Warramunga man Lincoln Crowley became Australia's first Indigenous judge of a Supreme Court. And he will certainly not be the last. But it warrants remembering that while the participation of First Nations Australians in legal education is on the rise<sup>103</sup>, there remain significant barriers to equal participation in education<sup>104</sup>,

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102 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, available at <<https://www.lawsociety.com.au/sites/default/files/2022-06/2021%20Annual%20Profile%20of%20Solicitors%20in%20NSW.pdf>> at 12.

103 Hobbs and Williams, "The participation of Indigenous Australians in Legal Education, 2001-18" (2019) 42 *UNSW Law Journal* 1294.

104 See, eg, Schwartz, "Retaining our Best: Imposter Syndrome, Cultural Safety, Complex Lives and Indigenous Student Experiences of Law School" (2018) 28(1) *Legal Education Review* 1; Melville, "Educational Disadvantages and Indigenous Law Students: Barriers and Potential Solutions" (2017) 4 *Asian*



which is perhaps best demonstrated by noticing that the most frequent appearances in the High Court are by white men who went to the same few universities.

*Steps for aspiring and young lawyers*

54. So 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 institutions. And it is a goal the achievement of which can, and should, involve everyone in the profession.
55. That brings me back to this room: what can aspiring and young lawyers do in pursuit of that goal? A number of things come to mind. Young lawyers can encourage their firms and organisations to sign up and commit to diversity initiatives, such as those run by Pride in Diversity; push them to brief more diverse junior and senior counsel; form or participate in diversity and inclusion networks; and call out instances of exclusionary practices. As they progress, young lawyers can mentor students and younger practitioners of all backgrounds, encouraging those in their networks to do so as well. Senior members of the profession can be encouraged to pay forward the support and encouragement that they received as young

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*Journal of Legal Education* 95; Melville, "Barriers to Entry into Law School: An Examination of Socio-Economic and Indigenous Disadvantage" (2014) 24 *Legal Education Review* 45.

lawyers. One of the strengths of the legal profession is its collegiality.

56. As each of you are already doing, aspiring and young lawyers can educate themselves 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"<sup>105</sup>. This is directed, in particular, to those in relative positions of privilege. And, of course, it is crucial to remain interested and passionate, including through participation in democratic processes.

57. 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 historical unequal divisions of labour, and to adopting

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<sup>105</sup> 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).

diverse family structures, will put the legal profession on a firm trajectory for structural change.

58. 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 profession.