

# Judge Judith Gibson

## Judge of the District Court of New South Wales



**Madeleine James**, Senior Associate at Corrs Chambers Westgarth and CAMLA Young Lawyers Committee Member, speaks to **Judge Judith Gibson**, to discuss her thoughts on International Women's Day. Judge Gibson was appointed to the District Court of NSW in 2001 and is the Defamation List Judge for the court. She has been the Bulletin Author and a contributor to Australian Defamation Law and Practice since 1993. She is a member of the Experts Advisory Committee for the Department of Justice which produced the Review of Model Defamation Provisions<sup>1</sup> resulting in amendments to the uniform legislation, as well as the Review of Model Defamation Provisions - Stage 2.<sup>2</sup>

**MADELEINE JAMES:** The 2022 International Women's Day campaign theme is #BreaktheBias. What does this mean to you and how would you suggest this is implemented in our readers' work and personal lives?

**JUDGE GIBSON:** Gender inequality impacts many aspects of women's lives in ways where law reform is imperative. #BreaktheBias confronts the twin myths that, firstly, women already have equality in the workplace and society and, secondly, that such equality is unobtainable without what Janet Albrechtsen, rather dismissively, calls a "magic wand". (These two theories are, of course, wholly inconsistent with each other, but that's another story).

First, gender financial inequality remains a significant issue. We take for granted now that women can work, obtain bank loans and have superannuation, but financial equality for women in the workplace is still elusive. We may laugh at the 1980 film "9 to 5" (currently a musical, so it must still be relevant), but have the inequalities it pointed out really gone away?

Take superannuation as an example. We consider superannuation an essential workplace entitlement, largely because of the 1992 Commonwealth superannuation scheme. Prior to this, super was something not many women workers had access to; in the early 1980s, my mother and a group of her co-workers had to enter into a work negotiation about superannuation entitlements to ensure that women were even permitted to be in the company's superannuation fund. This was not a "glass ceiling"-type issue; they could not even get in the front door. So, how are women managing with super now? Even with the Commonwealth superannuation scheme celebrating its thirtieth anniversary this year, women still retire with 42% less superannuation than men.<sup>3</sup>

That is just one example, but these kinds of financial inequalities still have many consequences for women in terms of equality before the law as well as in society.

Second, on the question of gender equality before the law, women continue to face significant disadvantages as victims of sex crimes and domestic violence. I recall lively

discussions (and a bit of singing from "Donna Condom") about the right path for reform at training nights at the Women's Legal Centre when I was on the roster in the 1990s. Certainly, there have been many important reforms, but there is still much to be done, and technology has now added a whole new range of problems.

How do we implement #BreaktheBias in our work and personal lives? We keep challenging the bias and promote the social as well as legal changes necessary to overcome it. Also, we should not lose sight of the significant reforms that have already been achieved.

**MADELEINE:** If there is one thing you would celebrate about International Women's Day in this industry, specifically, what would it be?

**JUDGE GIBSON:** You asked Justice Lucy McCallum this question in your 2021 IWD Edition, and I would like to adopt her answer. In addition, as her swearing-in ceremony as the new Chief Justice of the Supreme Court of the Australian Capital Territory takes place on 8 March 2022, I would like to refer to this event as a matter to be celebrated on that day!

**MADELEINE:** Are there any law reforms in your sector that you think are desperately needed? If so, what are they?

**JUDGE GIBSON:** Defamation law reform is certainly needed, but "desperately" is an adverb that perhaps should be applied more widely to the need for the legal system to confront and regulate technological innovation and change. The internet has been with us for nearly three decades and technological innovation has got so far ahead of law reform that it will soon be too late.

The problem is that, while alluring areas of the law like defamation attract attention from politicians and the media, there need to be consistent liability principles across the board. The basis upon which internet intermediaries are liable for the actions of individuals online in copyright, misleading or deceptive conduct, contract, criminalised speech and defamation all differ, and this leads to uncertainty.

There is also the need to address the impact of technology on privacy, which I note was the subject of ALRC recommendations in 2014,

which included the introduction of a civil action for serious breaches of privacy.<sup>4</sup>

The use of technology in the court room created additional problems during the pandemic, because the need for AVL created additional technology problems which courts had to deal with on the run. We all need to be ready for the courtrooms of the future.

In my opinion, the real problem, in an Andy Warhol world of fifteen-minute fame, is not defamatory publication, but "fake news", trolling, revenge porn, hate speech and other technology-based "Monsters from the Id". These new forms of publication require a total rethink of causes of action (civil and criminal) and of remedies. This is of particular relevance to women because they are often the victims, particularly of revenge porn and trolling.

For all these reasons, I would like to see the ALRC or some similar Commonwealth body having a watching brief on technology law reform in general.

**MADELEINE:** What developments do you see on the horizon in 2022 for the communications and media law landscape?

**JUDGE GIBSON:** I hope to see both amendments to the uniform defamation legislation – Stage 1 and Stage 2 – become law. That will be an important step in the law reform process to bring legislation up to date, not only with the reality of online publishing, but also other changes of direction in the law such as proportionality. In terms of the media industry, one of the most significant changes will be the introduction of a defence of publication of matter concerning an issue of public interest.

**MADELEINE:** What advice would you give to the next generation of female leaders in the industry?

**JUDGE GIBSON:** As leaders, they really don't need my advice, but I would like to add that collegiality is important, not only in relation to gender bias issues, but for women in the legal profession and the media generally.

Also, I have always rather liked something that Steve Martin said: "Be so good they can't ignore you".

1. <https://www.justice.nsw.gov.au/justicepolicy/Documents/review-model-defamation-provisions/Final-CAG-Defamation-Discussion-Paper-Feb-2019.pdf>  
2. [https://www.justice.nsw.gov.au/justicepolicy/Pages/lplcld/lplcld\\_consultation/review-model-defamation-provisions.aspx](https://www.justice.nsw.gov.au/justicepolicy/Pages/lplcld/lplcld_consultation/review-model-defamation-provisions.aspx)  
3. <https://www.australiansuper.com/superannuation/superannuation-articles/2020/02/gender-equality-and-your-super#:~:text=The%20report%20found%20that%20women,42%25%20less%20super%20than%20men>  
4. <https://www.alrc.gov.au/publication/serious-invasions-of-privacy-in-the-digital-era-alrc-report-123/>