

**AUSTRALIAN WOMEN LAWYERS, THIRD NATIONAL CONFERENCE,
SATURDAY 7 AUGUST, 2010**

STATE OF THE PROFESSION*

The Hon Justice Margaret McMurdo AC[±]

I commence by acknowledging the traditional owners, the Turrbal people and, on the other side of this meandering brown river, the Jagera people. For tens of thousands of years before European settlement they prospered on this land. No doubt their women Elders met with younger women members to discuss how the tribe as a whole could do things better: not, in essence, so very different to this riverside gathering.

Current numbers of women at the Bar and Bench in Australian jurisdictions

Figure 1 below gives a sound overview of the current numbers of women at the Bar throughout Australia. It is not exactly a comparison of apples with apples but nor is it apples and oranges. The figures in respect of Victoria, Western Australia, Northern Territory and Tasmania include practising members only, whereas the figures in respect of Queensland, New South Wales, South Australia and the ACT include practising and non-practising members. Perhaps it is more a comparison of oranges and mandarins!

* This paper was presented during a panel discussion on the State of the Profession where my role was to deal with the Bar and judiciary.

[±] President, Court of Appeal, Supreme Court of Queensland. I acknowledge the very great assistance of my associate, Katie Allan, who collected the information in the tables and graphs.

Figure 1: Current numbers of women at the Bar throughout Australia

	QLD ¹	NSW ²	VIC ³	SA ⁴	WA ⁵	NT ⁶	ACT ⁷	Tas ⁸
Total members of the Bar	1272	2763	1873	214	210	21	91	44
Women at the Bar	206	500	444	47	37	7	20	7
Total QCs & SCs	130	587	219	34	27	6	19	11
Women QC & SCs	3	40	21	5	3	3	1	0

In South Australia, all life members and associate members are male. Of the 47 female members of the South Australian Bar, 27 (about half) have less than five years experience. The female senior counsel were appointed in 1982, 1994, 1996, 2004 and 2006.⁹

In Tasmania, three of the seven female members of the Bar practise in Tasmania. Of the remaining four, two practise predominantly in New South Wales and two in Victoria.¹⁰

¹ Donna Rea, Bar Association of Queensland (28 July 2010); Bar Association Queensland, *Barristers Directory* <<http://www.qldbar.asn.au/>> (3 August 2010).

² New South Wales Bar Association, *Statistical profile of the Bar* <http://www.nswbar.asn.au/docs/about/barstats/barstats_index.php> (3 August 2010).

³ Fiona McLeod, The Victorian Bar (23 July 2010); The Victorian Bar, *Barristers Directory & Size and Composition of the Bar* <<http://www.vicbar.com.au/>> (3 August 2010).

⁴ Jane Alexander, South Australian Bar Association (20 July 2010).

⁵ Karen Knox, Western Australian Bar Association (23 July 2010).

⁶ Figures provided by Northern Territory women lawyers at the *Australian Women Lawyers Third National Conference*, 6-8 August, Brisbane.

⁷ Lorraine Walker M (22 July 2010); The Australian Capital Territory Bar Association, *Barrister Directory* <<http://www.actbar.com.au/>> (3 August 2010).

⁸ Tamara Dikkenberg, The Tasmanian Independent Bar (19 July 2010); The Tasmanian Independent Bar, *Barrister Directory*, <<http://www.tasmanianbar.com.au/barristers.html>> (3 August 2010).

⁹ Jane Alexander, SA Bar Association (20 July 2010).

¹⁰ Tamara Dikkenberg, The Tasmanian Independent Bar (19 July 2010).

Figure 2 translates those numbers to percentages.

Figure 2: Current percentages of women at the Bar throughout Australia

	QLD	NSW	VIC	SA	WA	NT	ACT	TAS
Percentage of Women at the Bar	16.2%	18.1%	23.7%	21.9%	17.6%	23.8%	22.0%	15.9%
Percentage of Women QCs/SCs	2.3%	6.8%	9.5%	14.7%	11.1%	16.7%	5.3%	0.0%

The verdict: could certainly be better, but better than it has been.

Figure 3 shows that in Western Australia there are 17.6 per cent women barristers compared to 15.5 per cent in 2008, and 11.1 per cent of silks are women, up from 7.4 per cent in 2008.¹¹

Figure 3: Woman at the Bar in Western Australia¹²

	2008	2009	2010
Total members of the Bar	194	203	210
Women at the Bar	30	34	37
Percentage	15.5%	16.7%	17.6%
Total QCs & SCs	28	27	27
Women QC & SCs	2	2	3
Percentage	7.4%	7.4%	11.1%

In figure 4, New South Wales confirms this trend of steadily increasing numbers of women at the Bar, both generally and as silks.¹³

¹¹ Karen Knox, Western Australian Bar Association (23 July 2010).

¹² Karen Knox, Western Australian Bar Association (23 July 2010).

¹³ New South Wales Bar Association, *Statistical profile of the Bar*, <http://www.nswbar.asn.au/docs/about/barstats/barstats_index.php> (3 August 2010).

Figure 4: Women at the Bar in New South Wales (Practicing Members) ¹⁴

	2006	2007	2008	2009
Total members of the Bar	2026	2066	2060	2086
Women at the Bar	327	347	360	379
Percentage	16.14%	16.80%	17.48%	18.17%

Figure 5 shows a similar trend in Victoria: 24 per cent, up from 16 per cent in 1998 with 9.5 per cent of silks, up from six per cent in 1998. ¹⁵

Figure 5: Women at the Bar in Victoria¹⁶

	1998	2010
Percentage of Women at the Bar	16%	24%
Percentage of Women QCs/SCs	6%	9.5%

In contrast with those figures, women readers in Victoria make up approximately 30 per cent of each readers' course and have for about the last 20 years. Yet these numbers are not fully reflected in the tables. ¹⁷

Figure 6 shows the position in South Australia, where again we see the pleasing trend continuing: 20.8 per cent women barristers, up from 17.1 per cent in 2006. But note here that the percentage of women silks has actually fallen from 17.24 per cent in 2006 to 13.16 per cent in 2009. ¹⁸ The numbers of women silks in Australian

¹⁴ New South Wales Bar Association, *Statistical profile of the Bar*, <http://www.nswbar.asn.au/docs/about/barstats/barstats_index.php> (3 August 2010).

¹⁵ Fiona McLeod, *The Victorian Bar* (23 July 2010); *The Victorian Bar, Barristers Directory & Size and Composition of the Bar* <<http://www.vicbar.com.au/>> (3 August 2010).

¹⁶ Fiona McLeod, *The Victorian Bar* (23 July 2010); *The Victorian Bar, Barristers Directory & Size and Composition of the Bar* <<http://www.vicbar.com.au/>> (3 August 2010).

¹⁷ *Ibid.*

¹⁸ Jane Alexander, *South Australian Bar Association* (20 July 2010).

jurisdictions are so small that I suggest this probably reflects a sole woman appointed to the Bench in 2008 and another in 2009.

Figure 6: Women at the Bar in South Australia¹⁹

	2006	2007	2008	2009
Total members of the Bar	164	174	183	192
Women at the Bar	28	32	36	40
Percentage	17.1%	18.4%	19.7%	20.8%
Total QCs & SCs	29	29	34	38
Women QC & SCs	5	5	5	5
Percentage	17.24%	17.24%	14.71%	13.16%

Not unexpectedly, these tables generally confirm what we have all sensed anecdotally and intuitively: the number of women practising at the Bar throughout Australia is steadily increasing, but the number of women senior counsel still remains disappointingly and discouragingly low.

On the other hand, when you consider the exponential increases in numbers of women judicial officers throughout Australia in the last two decades, most of whom have been recruited from the ranks of the middle and senior Bar, the present numbers of women at the senior Bar in Australia should be viewed more optimistically. See figures 7 – 15 inclusive below.

¹⁹ Jane Alexander, South Australian Bar Association (20 July 2010).

Figure 7: Women Judicial Officers – Commonwealth

	Total Judges and Magistrates	Women Judges and Magistrates	Percentage ²⁰	Percentage in 2001 ²¹
High Court	7	3	42.9%	
Federal Court	49	8	16.3%	10%
Family Court	38	14	36.8%	28%
Federal Magistrates Service	58	18	31.0%	
TOTAL	152	43	28.3%	

Figure 8: Women Judicial Officers – Northern Territory

Supreme Court	6	2	33.3%	17%
Magistrates	13	3	23.1%	
TOTAL	19	5	26.3%	

Figure 9: Women Judicial Officers – Queensland

Supreme Court and Court of Appeal	24	8	33.3%	28%
District Court	38	8	21.1%	
Magistrates	86	30	34.9%	
TOTAL	148	46	31.1%	

Figure 10: Women Judicial Officers – New South Wales

Supreme Court and Court of Appeal	48	9	18.8%	9%
Land & Environment	6	1	16.7%	
District Court	68	18	26.5%	
Industrial Relations Comm.	10	2	20.0%	
Magistrates	135	55	40.7%	
TOTAL	267	85	31.8%	

²⁰ Australasian Institute of Judicial Administration, *Judges and Magistrates (% of Women)* <<http://www.aija.org.au/gender-statistics.html>> (29 July 2010).

²¹ Justice Roslyn Atkinson, 'Women and Justice – Is there Justice for Women?' *Address at the inaugural Australian Women Speak Conference hosted by the Commonwealth Office of the Status of Women, Canberra* (27 August 2001).

Figure 11: Women Judicial Officers – Australian Capital Territory

ACT				
Supreme Court and Court of Appeal	4	1	25.0%	0%
Magistrates	7	3	42.9%	
<i>TOTAL</i>	11	4	36.4%	

Figure 12: Women Judicial Officers – Victoria

Victoria				
Supreme Court and Court of Appeal	39	9	23.1%	6%
County Court	62	25	40.3%	
Magistrates	112	45	40.2%	
<i>TOTAL</i>	213	79	37.1%	

Figure 13: Women Judicial Officers – Tasmania

Supreme Court	6	2	33.3%	0%
Magistrates	14	3	21.4%	
<i>TOTAL</i>	20	5	25.0%	

Figure 14: Women Judicial Officers – South Australia

Supreme Court	13	4	30.8%	7%
District Court	22	3	13.6%	
Magistrates	38	12	31.6%	
<i>TOTAL</i>	73	19	26.0%	

Figure 15: Women Judicial Officers – Western Australia

Supreme Court	22	4	18.2%	12%
District Court	27	10	37.0%	
Magistrates	47	15	31.9%	
<i>TOTAL</i>	96	29	30.2%	

The 2009 Court Appearance Survey

As you have heard from others today, the 2009 Court Appearance Survey²² was the result of a successful collaboration between the Law Council of Australia's Equalising Opportunities in the Law Committee and conference hosts, Australian Women Lawyers. Researchers collated from the survey useful information on the proportion of court appearances by gender in the Australian States and Territories during May 2009: see figure 16.

Figure 16: Summary of the 2009 Court Appearance Survey Findings – comparison of appearances by female counsel and bar populations²³

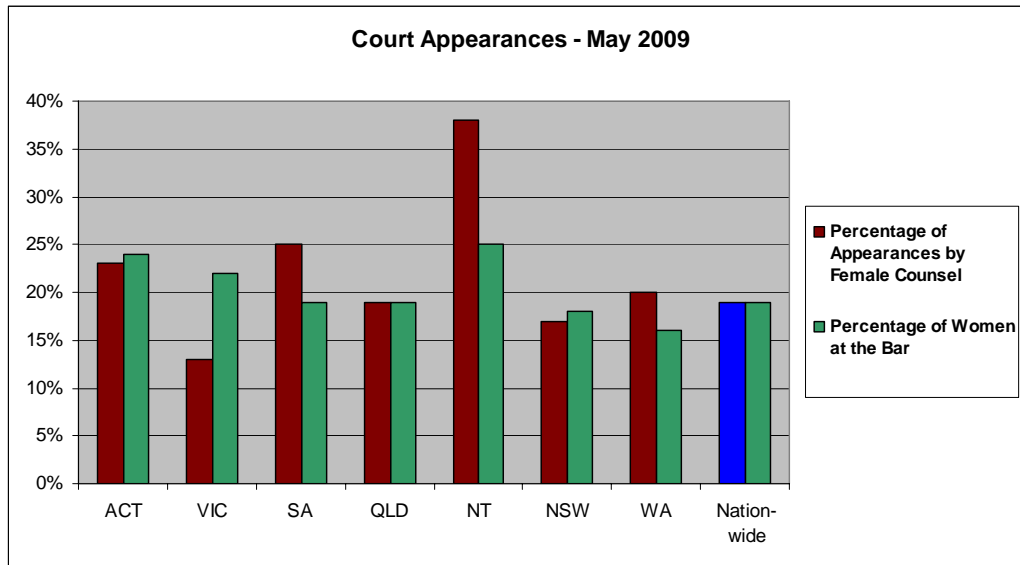
	ACT	VIC	SA	QLD	NT	NSW	WA	Nation-wide
Percentage of Appearances by Female Counsel	23%	13%	25%	19%	38%	17%	20%	19%
Percentage of Women at the Bar	24%	22%	19%	19%	25%	18%	16%	19%
Percentage of Appearances by Female QC/SCs	4%	8%	18%	5%	33%	9%	12%	9%
Percentage of Women QC/SCs	7%	7%	14%	4%	25%	6%	8%	6%

Figure 17 illustrates the percentage of appearances by female counsel during May 2009 compared to the percentage of women then at the Bar in each jurisdiction (other than Tasmania). The result nationwide was unexpected and pleasing: the percentage of court appearances by women barristers broadly matched the percentage of women at the Bar, with the Northern Territory winning by a long way.

²² Law Council of Australia, '2009 Court Appearance Survey' (October 2009) <www.lawcouncil.asn.au/programs/national-policy/eol/survey.cfm>

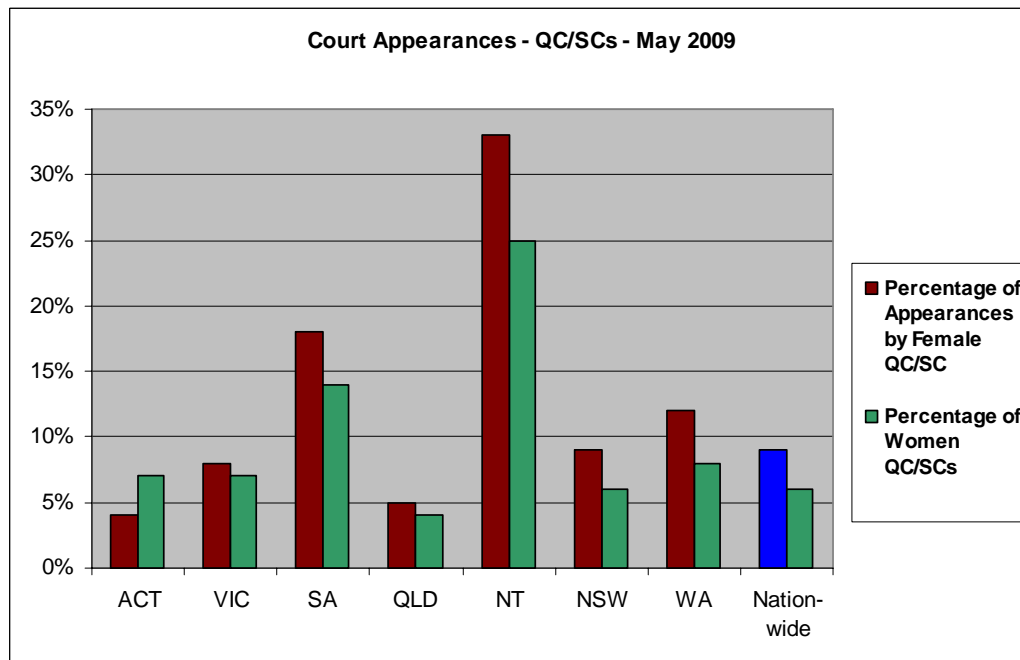
²³ Law Council of Australia, '2009 Court Appearance Survey' (October 2009) <www.lawcouncil.asn.au/programs/national-policy/eol/survey.cfm>

Figure 17: Graphical summary of the 2009 Court Appearance Survey Findings – comparison of appearances by female counsel and Bar populations



The graph of court appearances by women silks during May 2009 is set out in figure 18.

Figure 18: Graphical summary of the 2009 Court Appearance Survey Findings – comparison of appearances by female QC/SCs and Bar populations



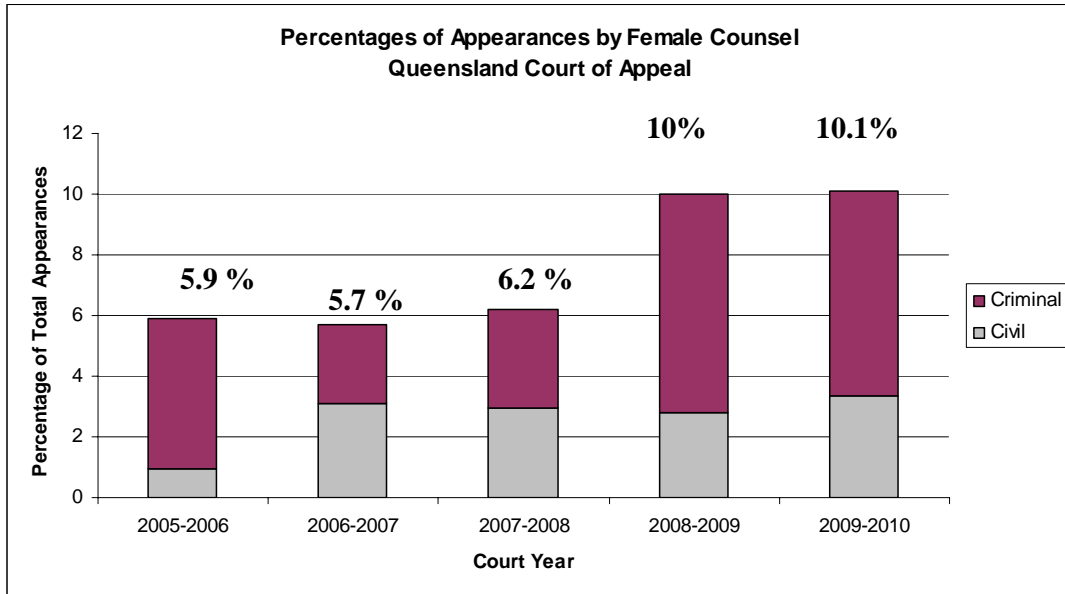
It shows that women silks punched above their proportional weight at all Australian Bars, other than the ACT.

I suggest, when interpreting this and other like graphs and tables, that the low number of women silks throughout Australia's various jurisdictions means that even a modest number of court appearances can cause a deceptively large spike, especially at small Bars like the Northern Territory, Tasmania and the ACT.

Longitudinal Gender Statistics at the Queensland Court of Appeal

I thought you may be interested to compare the nationwide court appearance survey results for May 2009 to the longitudinal gender statistics of court appearances kept by my court, the Queensland Court of Appeal: see figure 19.

Figure 19: Percentages of Appearances by Female Counsel – Queensland Court of Appeal 2005-2010



Against the expected trend, the graph shows a slight decline in the number of appearances by female counsel from 2005-2006 to 2006-2007. But then the trend of steady improvement returns, particularly in 2008-2009 and 2009-2010. The 10.1 per cent in the 2009-2010 figures should be compared with the 18.9 per cent of women practising at the Queensland Bar.

As I stated earlier, because of the small numbers of court appearances by women counsel, a modest increase can make a significant graphical impression. I suspect the 2005-2006 figures reflect more regular appearances at that time in the Court of Appeal by a small cohort of women counsel for the DPP and Legal Aid Queensland, particularly the then DPP, Leanne Clare, before her appointment to the District Court Bench.

Figure 20 is the same information expressed numerically.

The statistics do not distinguish between senior and junior counsel or speaking or non-speaking roles.

Figure 20: Number of Appearances by Female Counsel – Queensland Court of Appeal 2005 – 2010

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Total number of appearances	944	877	788	880	849
Total number of appearances by female counsel	60	50	49	86	89

These figures are expressed in percentages in figure 21.

Figure 21: Percentages of Appearances by Female Counsel – Queensland Court of Appeal 2005 – 2010

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Average Percentage of Appearances by Female Counsel	6.30%	5.70%	6.20%	10%	10.10%
Percentage in Civil Matters	1.00%	3.08%	2.97%	2.80%	3.33%
Percentage in Criminal Matters	5.30%	2.62%	3.32%	7.20%	6.77%

These statistics from Queensland's Court of Appeal paint a different picture to the nationwide Court Appearance Survey picture of May 2009. They suggest that appearances by women barristers at appellate level, unlike in the May 2009 survey, are not proportionate to women's membership of the Bar. They suggest that women still have a way to go in achieving equality at the Bar.

Some anecdotal views of Queensland women barristers

In preparation for this discussion panel, I recently broke bread with a number of Brisbane women barristers at various stages of their careers. All have busy practices and are highly regarded by the profession and the judges. It was an affirming meeting. Each had their unique path at, experience of, and opinion on life at the Queensland Bar.

Before I share my impressions of that meeting with you, I must congratulate the Queensland Bar Association on their major sponsorship of this important conference. It shows their real commitment to ending gender inequality at the Queensland Bar. I commend them for this.

I return now to share my impressions of my meeting with some Brisbane women barristers and apologise to them if I have not apprehended their views accurately.

- Those with young children praised the flexibility that life at the Bar offers.
- All were pleased that the Bar Association of Queensland Committee reserves two of its places for women members. Not only are those two places filled by women, but two other women were elected by the general membership, with the result that four of the Bar Council's 17 members are currently women. This equates to 23.5 per cent, above the 18.9 per cent women membership of the Queensland Bar.
- Some felt that women barristers occasionally missed out on useful trial experience because of a perception amongst ignorant solicitors, or perhaps their clients, that women were not tough enough cross-examiners or up to the cut and thrust of hard-fought litigation.
- Some apprehended that their practices may have been even more successful had they been male.
- One clever young woman barrister reported that, despite her extensive experience as a commercial lawyer throughout the world, it was only at the Brisbane Bar that she was made to feel an oddity and an outsider when she was often asked "So what's it like, being a woman barrister?" And, despite this experience, she was still bemused when asked by a youngish male silk who heard she was having her first child: "Are you married?"
- Never mind! My women barrister friends considered that, on the whole, the boys at the Queensland Bar are coping pretty well with all this change! The women barristers, like all of us, well know from experience that the law is a

conservative profession in which reform is incremental. But they, like you, are all doing their bit to hurry things along.

- Most apprehended that support for women barristers from the big firms was patchy, despite the lip-service adoption of the equal opportunity briefing policy. Those present from the big firms, please note and do what you can to change it.
- All thought the equal opportunity briefing policy was a positive initiative for women barristers and all had personally benefited from it. It has been particularly embraced by the Queensland and Commonwealth governments and I commend them for this. Those present from the Queensland and Commonwealth governments, please pass on this commendation to the individuals responsible for implementing the policy so positively.
- To my great delight, I can report that the unanimous view of these women barristers was that the Bar was a wonderful career and the right life choice for them.
- Queensland women barristers, unlike their Victorian colleagues, do not have a women barristers association. But these women barristers from Queensland spoke proudly of their effective, organised, though informal network, supporting women who have recently come to the Bar, and each other. This made my heart sing! I can tell you that these Queensland women barristers take seriously their mentoring role. Senior women counsel mentor experienced junior women counsel. Experienced junior women counsel mentor women baby barristers. And they reported that the best and most experienced of the men silks do, too!

- My women friends at the Bar spoke of the primacy of encouraging more talented young women to come to the Bar. They want to share their success at and love of the Bar with other women who enjoy advocacy. They want the brightest and best women advocates to see a career at the Queensland Bar as both viable and desirable. With that in mind, they regularly address women law students and young women practitioners who might be considering a career as a barrister, providing information and encouragement.
- One successful and respected woman barrister spoke of the eye-opening experience for her of attending the AWL conference in Melbourne two years ago and how she encouraged women barristers new to the Bar to come to this conference.
- All the women barristers spoke of their hope that one day – and soon – it will be unnecessary to keep these statistics because gender will not be an issue at the Bar or on the Bench.

Some concluding thoughts

I think we all share that sentiment. I know I anticipate a time when women form a significant enough proportion of the Australian Bench and Bar to comfortably bring the female perspective to their professional lives, and not be mere honorary male barristers and judicial officers. As numbers of women increase, especially at the middle and senior levels, the Bar and the Bench will not be solely a man's place but also a woman's. The statistics, and my women barrister friends, suggest we are edging closer to that "one day".

Dare I suggest that perhaps we are already in that place today in the Queensland Court of Appeal? I was delighted when my experienced and distinguished colleague,

Justice Margaret White, was appointed to the Court of Appeal. There was no brou-ha-ha about her gender, nor about the fact that the Queensland Court of Appeal now comprises 50 per cent women, including a woman President. How liberating! Here in Queensland, we like to quietly demonstrate practical leadership. No doubt that's why the Prime Minister and Mr Abbott are presently spending so much time in Queensland!

Let me end by reminding you why old girls like me are so keen for women to be proportionally represented at the Bar and in the judiciary. It is not just about women having lucrative, prestigious, powerful careers like men— although there is nothing wrong with money, prestige and power – especially when it is used by good-hearted people. Equal pay for equal work is non-negotiable. But equal representation of women at all levels of the legal profession is about bigger picture stuff!

The judiciary is a vital arm of democratic government in Australia. In 1990, no women had a voice in it. Today the Queensland judicial system has at its head a High Court with almost 40 per cent women; a Court of Appeal with 50 per cent women; and a Supreme Court with one-third of its judges women.

The independent legal profession, not just the judiciary, has an institutional role in Australia's democracy. It ensures community access to the rule of law, providing equal justice for all according to law. Women have only comparatively recently been able to join the Australian legal profession. They have only more recently embraced that opportunity in numbers. Being a member of the independent legal profession in a democracy is a privilege. As my women barrister friends demonstrate, lawyers can have challenging, well paid and fulfilling careers. But membership of the legal

profession also brings responsibilities, sometimes onerous ones, like standing up for the rights of the least popular and the least attractive members of our society against governments, the rich and powerful, and populist views. If women are to play an equal role in Australia's democracy, then women, as well as men, must be equally represented in the independent legal profession and in the third arm of government, the judiciary. That way the female perspective will be appropriately added to jurisprudence generally, and, in particular, to the jurisprudence surrounding access to the rule of law.

As to future directions to help achieve this goal, I endorse what has been said by earlier speakers, Noor Blumen and Janean Richards, Fiona McLeod SC and by my women friends at the Bar. They are all on the right track. I make three final observations:

- First, as women barristers and judicial officers you are helping by being there, competently doing the hard cases, professionally fulfilling your important role as barrister or judicial officer, in becoming involved in your professional associations, and by ensuring the profession as it feminises remains respected and appropriately remunerated.
- Second, like my women friends at the Bar and on the Bench, all women lawyers and academics should mentor other women in the legal profession, so that more and more clever young women join and succeed in it, especially at the Bar and the Bench.
- Third, in the short and medium term, and this is especially for those of you who brief or have influence over briefing counsel, embrace and improve upon the equal briefing policy, in practice as well as in theory.

That way, I reckon there's a good chance that, before I die, the legal profession will be holding meetings like this one, scouring graphs and tables akin to the ones we have been digesting, with a view to ensuring that men are proportionally represented at the Bar and on the Bench, in accordance with their democratic rights.

Perhaps it's as well that my mother lived to a great age!

I wish each of you success in your career in this fine, institutionally important and diverse profession of ours.