



# LAUNCH OF THE VICTORIAN WOMEN LAWYERS' PROFESSIONAL MENTORING PROGRAM

The Honourable Associate Justice Mary-Jane Ierodiconou

Performance Appraisals

Wednesday, 18 October 2023<sup>1</sup>

## Introduction

Good evening. I want to begin by acknowledging the traditional custodians of the land on which we meet tonight. I offer my respects to their elders, past, present and emerging, and extend that respect to those with Aboriginal and Torres Strait Islander heritage here today.

Tonight, I am going to discuss annual performance appraisals. They remain popular in the Victorian legal sector. I recognise that some organisations do not use them because they prefer systems promoting immediate feedback. Many use a combined approach.

Whether given immediately or in an annual appraisal, performance feedback can identify areas of employee growth and development. It can assist in achieving personal and organisational goals. Done well, feedback benefits individuals and the organisation. On the other hand, if no performance feedback is given, it can lead to uncertainty, stagnation and a breakdown in work relationships.

A real problem with performance feedback is that it can be impacted by implicit bias. Research shows a common implicit bias is that leaders are men. I will share research and invite you to reflect on structural changes to ameliorate implicit bias. Then, I will suggest how to prepare for your annual performance appraisal.

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<sup>1</sup> I thank my Associate, Aiman Tarmizi, for his research on implicit bias, and for editing this speech.



## How does implicit bias impact performance appraisals?

The research of Stanford University Professor Shelley Correll and co-authors Dr JoAnne Wehner and Lori Mackenzie reveals the problem to be the 'open box'.<sup>2</sup> The open box refers to the space where managers provide feedback to answer vague questions such as: 'Describe the ways the employee's performance met your expectations' or 'What are the significant accomplishments?'. As they say, "without structure, people are more likely to rely on gender, race, and other stereotypes when making decisions – instead of thoughtfully conducting assessments using agreed-upon processes and criteria that are consistently applied across all employees".<sup>3</sup> Professor Correll and her co-authors found:

"In analysing men's and women's written performance reviews, we discovered that women were more likely to receive vague feedback that did not offer specific details of what they had done well and what they could do to advance. Women were more likely to be told, for example, to 'do more work in person' with no explanation about the issue to overcome or the goal of the change. Men were more likely to receive longer reviews that focused on their technical skills, compared to shorter reviews for women that were more concerned with their communication skills."<sup>4</sup>

Professor Correll and her colleagues found men described "in ways that align with leadership and providing them with the coaching they need to advance, while offering women less praise and less actionable guidance to work with."<sup>5</sup>

Research by Dr Alison Wynn and Assistant Teaching Professor Emily Carian found that performance evaluations used different language for men and women:

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<sup>2</sup> Lori Mackenzie, JoAnne Wehner and Shelley J. Correll, 'Why most performance evaluations are biased and how to fix them', *Harvard Business Review* (2019).

<sup>3</sup> Ibid, 3.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid, 4.



“Whereas men were more likely to be described with ‘standout’ language such as ‘genius’ or ‘game-changer’, women were more likely to have their performance questioned with mentions of vague or non-technical improvements.”<sup>6</sup>

Disparity in how feedback is given drives gender inequity. Research by A/Professor Elena Doldor and Madeleine Wyatt found critical differences in how advice was framed for male and female leaders.<sup>7</sup> Men were encouraged to focus on being a visionary and think about the ‘big picture’, but women were encouraged to focus on delivery – executing other people’s vision. Men were encouraged to leverage politics to influence and network, but women were encouraged to cope with office politics and network horizontally. Men were encouraged to be assertive in their leadership ambitions, but women were encouraged to be cooperative and deferential in exerting leadership. Men were encouraged to develop confidence, while women’s lack of confidence was described as inherent.

### **What structural changes can be made to performance appraisals?**

Fairer performance appraisal systems can be designed. Drawing on the research I have discussed, I make these suggestions.

First, develop an effective rubric that defines the performance evaluation criteria against which employees will be assessed. The criteria should be transparent and align with the position description and KPIs.

Second, managers should collect the same types of performance data for employees during the year based on previously agreed criteria.

Third, develop a checklist to ensure the data collected throughout the year is referenced when filling the ‘open box’. Give evidence-based feedback rather than impressionistic feedback. Avoid vague feedback

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<sup>6</sup> Alison T Wynn and Emily K Carian, ‘High-hanging fruit: How gender bias remains entrenched in performance evaluations’ (2023) *Social Problems*, 3.

<sup>7</sup> Elena Doldor, Madeleine Wyatt and Jo Silvester, ‘Research: Men get more actionable feedback than women’, *Harvard Business Review* (2021).



such as “needs work on communication style”. Avoid general comments on personality. Focus on achievements instead. Vague feedback does not offer the employee an opportunity to advance their career.

Fourth, have consistent prompts because implicit bias can creep in, even on the amount that is written. Try to write the same amount for each staff member. “To be fairer and more consistent, you might prompt yourself to identify three specific, measurable outcomes for each of your employees.”<sup>8</sup>

Fifth, re-read all reviews for consistency. Look for patterns of variation that might indicate bias.

Sixth, provide training to those designing and conducting performance appraisals.

Seventh, be even-handed with the advice and feedback given to staff in your everyday interactions. Avoid the stereotypes identified by the research discussed above. Ensure the feedback is aligned with organisational goals and values.

Eighth, when assigning work, ask yourself whether that work will be invisible in the performance appraisal, or whether it will be measured. If the work is invisible, is that work being evenly distributed?

Ninth, if you have in-house professionals working in human resources or learning and development, utilise them. Acknowledge their professional skills. In my experience, they will be delighted to engage with you on these issues to build a fairer feedback system for everyone. They will have relevant information to share such as whether there are any industrial constraints or applicable policies.

Tenth, once you implement changes, review the outcome. Reflect on what else can be done to build good performance feedback systems in your organisation.

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<sup>8</sup> Lori Mackenzie, JoAnne Wehner and Shelley J. Correll, ‘Why most performance evaluations are biased and how to fix them’, *Harvard Business Review* (2019), 5.



## What can you do to prepare for a performance appraisal?

You might like to prepare yourself for performance appraisals by taking the following steps.

First, know your KPIs and how you will be evaluated. Ask if you don't know. You should know whether you are evaluated solely on billable hours and client development. Specifically, ask if a template evaluation is used and obtain a copy so you can prepare. If you are working part-time, ensure the KPIs reflect that. On that note, I recently read a paper written when we used Blackberries not iPhones. It was a study of the working time patterns of solicitors in private practice in Melbourne by Dr Iain Campbell, Jenny Malone and Professor Sara Charlesworth. It continues to have relevance.<sup>9</sup>

Second, and relatedly, if you know your KPIs, you will know when you are being assigned 'office housework'. I'm speaking of work outside your role that the organisation regards as low value but necessary to keep your workplace running smoothly such as planning office functions, arranging farewell gifts for colleagues, and tidying up communal spaces. If you are regularly asked to do the office housework, there are several ways to respond. Read Ruchika Tulshyan's article 'Women of Colour get asked to do more 'office housework.' Here's how they can say no.'<sup>10</sup>

Third, keep a record of achievements. Professor David Dodson writes: "The practice of conducting evaluations only once or twice a year is also subject to a *recency bias*, whereby we assign a higher probability of something happening again if it occurred recently."<sup>11</sup> Counter that by giving evidence of your achievements over the whole period you are being assessed.

Fourth, when completing the self-appraisal, use specific examples to evidence your achievements.

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<sup>9</sup> Iain Campbell, Jenny Malone and Sara Charlesworth, Centre for Employment and Labour Relations Law, *The Elephant in the Room: Working-Time Patterns of Solicitors in Private Practice in Melbourne* (Working Paper No. 43, May 2008).

<sup>10</sup> Ruchika Tulshyan, 'Women of Colour get asked to do more "office housework". Here's how they can say no', *Harvard Business Review* (2019).

<sup>11</sup> David Dodson, *The Manager's Handbook* (2023), 40.



Fifth, check your language. Read Hareem Mannan’s article: “Your Company’s Promotion Process is Broken”.<sup>12</sup> She writes about a manager who kindly sat down with her after she wrote her first self-appraisal to tell her it was the worst one he’d ever read: “And he was right – it was really awful ... I wrote every single line in passive voice with a lot of ambiguous ‘we’s’”.<sup>13</sup>

Sixth, discuss your self-appraisal with your mentor before submitting it. They can give you objective feedback.

Seventh, identify specific learning and development goals ahead of the appraisal discussion. Many performance appraisals end with a ‘what’s next’ regarding the next 12 months. This is an opportunity to seek specific learning and development opportunities that will help advance your long-term goals. Of course, you must be pragmatic and identify how that will add value to your organisation. There might be a specific course you wish to undertake, or an opportunity to act in a higher position or be seconded.

Eighth, if your performance appraisal isn’t fair, is it because of how the manager assesses you and their implicit biases, or is it a structural problem with the appraisal itself? Speak to your mentor or another trusted person about these issues and how you should respond.

Ninth, your performance appraisal will likely impact your pay – ensure you know your value. Be prepared to advocate for yourself based on your collected evidence about appropriate pay scales. Practice this discussion with your mentor.

Tenth, pay it forward. Share tips on how to attain a fair performance appraisal to lift everyone.

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<sup>12</sup> Hareem Mannan, ‘Your company’s promotion process is broken’, (January 2019) *The Startup*.

<sup>13</sup> *Ibid*, 2.



## **Launch**

It is now my pleasure, and privilege, to declare the 2023 VWL professional mentoring program launched!

Thank you to the VWL committee members who have put so much work into creating this year's mentoring program, and to all involved in organising this evening's event.

And congratulations to all participants who have volunteered to be part of the program. Thank you.