



Law Council
OF AUSTRALIA

29th Presidents of Law Associations of Asia (POLA) Conference: Remarks on Equity and Diversity

Speech delivered by Morry Bailes, President, Law Council of Australia at the POLA Conference, Canberra.

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Introduction

Welcome this morning to this important discussion on equity and diversity in the legal profession.

I pay my respects to the traditional owners of the land we are meeting on the Ngunnawal and Ngambri peoples and to Elders past, present and future, and acknowledge all Aboriginal and Torres Strait Islander peoples and First Peoples from across the region present here today.

As I prepared for these remarks on this most important topic to our profession, I reflected on some fundamental principles:

- Full equity and diversity means that we have representative numbers of people working in the law that reflect our communities' diverse views and experiences - women, Aboriginal and Torres Strait Islander peoples, people from other ethnically diverse backgrounds, people from rural, regional and remote areas, people with disability, LGBTI+ people, for example.
- To achieve this, our law associations, our legal practices and our law schools must take a leadership role to drive change, because as a matter of law nowhere is it more essential to demonstrate these principles than in the legal profession.
- If we are to properly represent the rights of all our fellow citizens, then the makeup of our profession must reflect the diversity of our societies.

This morning I wish to speak about equity and diversity in regards to two key areas:

- Gender Equity; and
- Cultural Diversity.

While equity and diversity extend far beyond gender and cultural diversity, both are equally vital, and where I will focus my remarks upon today.

Gender Equity and Diversity

In recent years, the Law Council has led the profession through a number of initiatives to help drive change in this area through our Inclusion and Diversity program.

It started with a landmark research project – the National Attrition and Re-engagement Study (or NARS as it is commonly known).

This was the first national study of its kind in Australia combining quantitative data – to confirm trends in progression and attrition rates of male and female lawyers – and qualitative research to examine the causes behind these trends.

The results of the final report released in 2014 were confronting and challenging.

Half of all women reported experiencing discrimination due to their gender. Half the women surveyed reported having been bullied or intimidated in their current workplace. One in four women reported that they had experienced sexual harassment in their workplace.

The consensus was that attrition rates and disengagement had graduated from an 'issue of general concern' to a 'real and immediate problem in need of solutions'.

The Law Council is thrilled (NARS) has been recognised by the International Bar Association, which announced earlier this year that it would be using it as a template for its global investigation into the reasons why so many women lawyers are leaving law firms.

In 2015, the Law Council brought together the heads of the Law Council's Constituent Bodies – (state and territory law societies and bar associations) and the major law firms in Australia to collaborate and address this issue – an Australian first for any industry.

That year the Diversity and Equality Charter was launched and unanimously adopted by these bodies to promote the respect and inclusion of all legal professionals, regardless of sex, sexuality, disability, age, race, ethnicity, religion, and culture. It was subsequently further adopted by a range of law firms, barristers' chambers, and individuals.

The revised [Equitable Briefing Policy](#), was launched in 2016. It is intended to drive cultural change within the legal profession, support the progression and retention of women barristers, and address the significant pay gap and underrepresentation of women in the superior courts.

The policy includes interim and long-term targets with the ultimate aim of briefing women barristers in at least 30% of all matters and being paid 30% of the value of all brief fees by 2020.

This first ever annual report was released on Friday 27 July, relating to data collected over the 2016-2017 financial year which found that:

- Women barristers received 20 per cent of the total briefs.
- Women barristers received 15 per cent of the total fees charged by barristers.
- Among junior barristers, women barristers received 28 per cent of briefs.
- Among senior barristers, women barristers received 12 per cent of briefs.

In 2016, we launched our landmark training program to help counter unconscious bias among lawyers – a comprehensive program offered via CPD accredited face-to-face workshops, train-the-trainer modules, and online courses.

The unprecedented national initiative is aimed at helping all Australian lawyers understand and work to counter unconscious bias.

It is a major first for a professional industry such as lawyers, and a clear indication of the profession taking practical steps towards greater inclusion and diversity.

The Law Council also published considerable webpage resources last year, including general information and tips relating to:

- bullying in the workplace;
- workplace harassment including sexual harassment;
- flexible work practices; and
- making your workplace LGBTI+ friendly.

But this is obviously still the beginning. We will continue our efforts in this area, working together in order to bring about real cultural change.

Statistics from the Australian Bar Association note that nationally, women barristers roughly still make up only 11 per cent of senior appointments, despite years of effort to address the imbalance through soft policy approaches.

When considering other fields lacking in women at the leadership level, you can perhaps cite a male-dominated industry. However, women currently make up 23 per cent of practising barristers in Australia.¹

We know from the Law Council's last comprehensive survey of court appearances in 2009 – and understand from the anecdotal reports – that women are appearing at a far lower rate than 30 per cent in our courts.

A recent national comparison of median incomes, reported to the Australian Taxation Office over 2014-2015, showed that the median taxable income was \$99,690 for male barristers, and \$27,866 for female barristers.

This 72 per cent pay gap is among the widest of all reported occupations.²

During its relatively short life to date, the Equitable Briefing Policy has attracted powerful backers – bar associations and law societies around the country were the first to sign on, with the major law firms, as well as a number of large corporates following suit.

I hope that we will see a notable improvement in the briefing of senior women, and a steady improvement in the progression of women barristers to senior ranks within the next five years.

But the challenge remains – how do we address the gap between our good intentions, and the persistent reality?

Flexible working policies, paid parental leave, disciplinary policies around inappropriate behaviour, counselling and coaching, understanding and addressing unconscious bias, and formal sponsorship by leaders to promote potential women leaders – are all important and necessary aspects of reform.

There is a lot of important work underway and progress has been pleasing, but there is no doubt that we need to continue our efforts in this area and to share our learnings across associations to ensure we are delivering the best outcomes we can – for our workplaces, in our ability to represent our clients in all their diversity, and to defend and uphold the rule of law by having the best legal minds on the team.

Cultural equity and diversity – the Aboriginal and Torres Strait Islander perspective

As vital and fundamental as gender equity and inclusion is, there are many other aspects to diversity in the legal profession.

¹ Same statistics: Australian Bar Association Statistics 2015 (30 June 2015), 3.

² Australian Taxation Office, *Taxation Statistics 2014-2015 – Detailed table Index*, <https://data.gov.au/dataset/taxation-statistics-2014-15/resource/69453283-be14-4959-8705-81b2360c0723>, Individuals – Table 14. Please note the numbers were not adjusted for hours worked, or the experience and seniority of the barrister.

And for Australia, perhaps none more complex and pressing than the need to work as a profession to address justice issues for Aboriginal and Torres Strait Islander peoples, as such this is where I will now direct my comments.

I have spoken previously about the Law Council's Justice Project, which has for the past 18 months, been gathering stories and evidence regarding the impact of a lack of access to justice across the nation.

The final report is due to be released in coming months.

Issues of Aboriginal and Torres Strait Islander peoples' shamefully disproportionate representation in our gaols, particularly in Western Australia and the Northern Territory, are well known – but remain unaddressed, and the Justice Project findings have only reinforced that.

A review by the Australian Law Reform Commission completed earlier this year found once again that urgent action is required – including bolstering funding to Aboriginal Legal Services, changing mandatory sentencing laws, and facilitating more 'justice by community for community' – through 'circle sentencing' models and the like.

Like with many of the challenges facing our Aboriginal and Torres Strait Islander communities, including child welfare, mental health and suicide rates, education and training, health and wellbeing, economic development – this 'by community, with community, for community' principle is the most effective way forward for justice issues.

And an important part of this is actively boosting the numbers of Aboriginal and Torres Strait Islander legal practitioners in this country.

Communities are better served when there are more Aboriginal and Torres Strait Islander teachers to teach in their communities' schools, when there are more Aboriginal and Torres Strait Islander doctors and health workers and nurses to staff health centres and treat Aboriginal and Torres Strait Islander people in culturally appropriate ways, when there are Aboriginal and Torres Strait Islander police men and women to liaise in Aboriginal and Torres Strait Islander communities and mitigate social problems, for example.

So, it stands to reason – that Aboriginal and Torres Strait Islander people will be better represented if we have more legal practitioners who share their cultural background.

The Law Council has an Indigenous Legal Issues Committee which includes Aboriginal representation.

And in Australia, we have strong and growing Aboriginal and Torres Strait Islander law student and lawyers associations in a number of jurisdictions, which are working hard to raise the profile of Aboriginal and Torres Strait Islander legal practitioners and to support and mentor Indigenous law students.

Yet, Bob Bellear was Australia's first Aboriginal judge, who served in the District Court of New South Wales from 1996 until his death in 2005.

In April of this year, the appointment of Queensland's first Indigenous judge, District Court Judge Nathan Jarro was a historic moment for Queensland and the country.

We have more work to do – strategies to increase recruitment and retention of young Indigenous graduates, and how to attract them to our practices and increase our own cultural competency will be important from now.

The Law Council is assisting by offering an annual scholarship for Aboriginal and Torres Strait Islander students who are enrolled in an approved course of study provided by an Australian tertiary institute, which is a prerequisite to admission as a legal practitioner in any Australian jurisdiction.

The scholarship, in honour of John Koowarta – an Aboriginal land rights pioneer and Winychanam Elder from the Archer River region around Cape York, began in 1994 and has assisted some 25 Aboriginal and Torres Strait Islander law students to date.

Diversity in the workplace, in Australia, is a much broader subject than of course merely one group of people, however I've concentrated on one area of interest for you today.

Conclusion

Equity and Diversity are two essential principles that we must embed in our practice and in our profession to enable us to do the best work we can.

There has been a great deal of momentum in recent years, and the Law Council of Australia is proud to have been taking a leading role in the push for equity in the profession, including gender equality, LGBTI+ inclusivity, and workplace bullying and harassment.

A huge proportion of our work and efforts at the Law Council focus on the needs of vulnerable people in our communities – Indigenous justice issues are one of our key priorities, refugee advocacy, women and family violence issues, child incarceration – just to name a few.

The next step is to ensure that our profession reflects the diversity of the communities we serve, and to hold ourselves accountable for the experience of all our colleagues, to be aware of our unconscious biases, and to work to bolster the numbers of legal practitioners from diverse backgrounds in our ranks.

I look forward to our discussions today that I hope will inform our progress in the year ahead on this fundamental issue for us all.

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