



Invisible women: Where are all the female lawyers?

ERROL CHUA Deputy Associate to His Honour Judge Young, Federal Circuit Court of Australia

More than 60% of law graduates entering the Australian workforce are female. So where are all the female lawyers?

It is beyond surmise that women face serious impediments when attempting to enter and remain in legal practice. Deep seated bias and prejudice have contributed significantly to the perennial dearth of female lawyers. Until the legal fraternity addresses and tackles this untenable taboo, this long and unjustified vacuum will continue interminably to the detriment of the legal profession.



Remarkably, while women account for two-thirds of law graduates in Australia, the gender pay gap between female lawyers and male lawyers is an astounding 40% according to a Morgan Consulting report from 5 March 2018. Even as recently as 2017, there remained a pay discrepancy of 13% between men and women of equal seniority according to Lawyers Weekly.

The Women Lawyers Association of NSW (WLANSW) reports that:

While most women enter the profession with considerable enthusiasm and ambition they are often faced with antiquated attitudes and embedded biases which hinder their advancement...

WLANSW elaborates that such biased attitudes are exemplified by out of date business models; rigid approaches to recruitment, promotion, mentoring; and a lack of flexibility.

The Law Council of Australia recognises these 'significant barriers' to women reaching senior positions and noted that such practice is undeniably detrimental to the profession because "it costs our profession dearly when we lose women from the workforce: in morale, productivity, human capital, the costs of retraining, lost investment and the inability to meet client expectations."

Although the situation has, arguably, improved since a mere generation ago, the inequity of this situation highlights the issues continue to plague women lawyers.

Can we really assume that the growing list of 'women firsts' means that the glass ceiling has been smashed? Dame Quentin Bryce, former, and first female, Governor-General of Australia, explains that this zeitgeist is a fallacy. She submits that these achievements merely prove that the ceiling still exists; and further, because contemporary society has been contented with these few achievements, the momentum of women's rights has in reality become stagnant to the point of regression.

Furthermore, former, and first female, High Court Justice Mary Gaudron declares that "references to the so-called 'gender pay gap' and associated euphemism of 'smashing the glass ceiling' should be relinquished." She maintains that "it is discrimination plain and simple ... [and at that,] discrimination which seems to be intractable and incapable of resolution by the application of the anti-discrimination laws." In other words, while paying women less may be considered criminal, it is not actually illegal.

Is this then a form of 'legalised discrimination'? The NSW Bar declares that such a gap would be "unacceptable in any other industry." Justice Gaudron points out that despite the law addressing equal pay for women doing the same job and also for 'work of equal value' as men, discrimination continues.

The NSW Bar, in a 2015 report, offered the following three 'main reasons' justifying women earning less than men, namely, that:

1. Women spend less hours in court when they first become barristers,
2. Female barristers are less likely to be closely mentored by senior barristers; and
3. There is a perception the bar has a male-dominated culture, which deters many women.

Arguably, the rationale of the pay divide is itself discriminatory and biased and reeks of victim blaming. First, there is no compelling reason why women would spend less time in court if they were given the same amount of briefs as men in the first place. Further, if women are more efficient, doing the same amount of work in less time, then this should not be held against them. Second, the fact that females are less likely to be closely mentored by senior barristers reflects the mindset and attitude of the mentors, not on the willingness (or lack thereof) of the learner. Third, perception that the Bar is 'male-dominated' is the very basis of discrimination faced by women that discounts their qualifications and capabilities, and dismisses their plight.

There is simply no basis to discourage, or actively prevent, women from being a part of the legal profession, nor to taint their rise to the senior ranks with an unjustified and baseless pay disparity.


A 2014 InfoTrack/Janders Dean survey found that perhaps the biggest apprehension within the legal sphere is that taking parental leave is the 'kiss of death' for any aspiring female lawyer. The misconception being that women returning from maternity leave can no longer meet work requirements. However, this is now recognised as a form of discrimination, with workplace agencies proactively 'naming and shaming' perpetrators.

Under the *Workplace Gender Equality Act 2012* (Cth), gender composition of the workforce, equal remuneration between women and men, flexible working arrangements, and, sex-based harassment and discrimination are targetted, demonstrating the government's commitment to remove the barriers to pay equity, specifically by "improving the paid parental leave scheme and ensuring flexible, affordable and accessible childcare."

Ultimately, social pressures and expectations on law firms will effect change and evolution of the legal profession. Instead of lamenting the effect on the traditional legal fraternity structure, progressive law firms should instead look to the rising tide of feminist contributions as a challenge to be more responsive to growing needs within the legal profession.

Optimistically, in other branches of the legal profession female representation is vastly improving. In Australia, 2006–16 saw appointments of female judges rise from 24% to 36%; female commissioners and judicial members at the Fair Work Commission and other civil and administrative tribunals have also increased proportionally and correspondingly. Such appointments sensibly utilise the seniority and experience of women lawyers and present more options for women lawyers who may not wish to engage in traditional legal practice. ■

- 1 Full version originally published in the *Journal of Judicial Administration*: Chua (2018) 28 JJA 44.



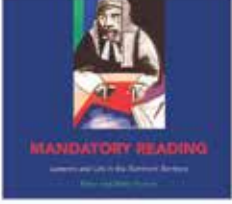
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