

## THE LAW, EQUALITY AND INCLUSIVENESS IN A CULTURALLY AND LINGUISTICALLY DIVERSE SOCIETY

### I INTRODUCTION

Among the many contributions made to Australian legal scholarship of its first 39 volumes, the *Adelaide Law Review* has highlighted issues facing culturally diverse groups in the community in a series of important contributions analysing Indigenous Australians' experience of the legal system in relation to customary law<sup>1</sup> and criminal justice,<sup>2</sup> and in legal education.<sup>3</sup>

This article draws on these contributions and extends the discussion to the relationship between cultural diversity in Australia and aspects of the law. Given the importance of embracing and benefiting from the cultural diversity that defines Australian society, it will no doubt be important for the *Review* in future volumes to consider this issue.

Part II briefly outlines the ubiquity and significance of cultural diversity in Australia. Part III identifies key barriers to accessing justice in our culturally and linguistically diverse society, focussing upon the challenge that linguistic diversity poses to effective participation in the justice system, including the Judicial Council on Cultural Diversity's guidelines on working with interpreters in courts and tribunals. Part IV discusses the role of Australia's anti-discrimination law. Finally, Part V considers cultural diversity within the legal profession and the courts, and the proactive steps required to address discrimination and inequality more broadly.

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<sup>1</sup> Justice MD Kirby, 'TGH Strehlow and Aboriginal Customary Laws' (1980) 7(2) *Adelaide Law Review* 172.

<sup>2</sup> Dean Mildren, 'Public Lecture: Aboriginals in the Criminal Justice System' (2008) 29(1) *Adelaide Law Review* 7; Michael Kirby, 'Black and White Lessons for the Australian Judiciary' (2002) 23(2) *Adelaide Law Review* 195.

<sup>3</sup> Heather Douglas, 'This is Not Just about Me: Indigenous Students' Insights about Law School Study' (1998) 20(2) *Adelaide Law Review* 315; Peter Devonshire, 'Indigenous Students at Law School: Comparative Perspectives' (2014) 35(2) *Adelaide Law Review* 309.

## II CULTURAL DIVERSITY IN AUSTRALIA

Australia is one of the most culturally diverse societies in the world today. Aboriginal and Torres Strait Islander peoples have the longest continuing culture in the world, and are estimated to number 798,400, or 3.3% of the total population of Australia.<sup>4</sup> The Australian Bureau of Statistics reports that in 2018, 7.3 million people resident in Australia, or 29% of the population, were born overseas.<sup>5</sup> The 2016 Census revealed that Australia is a nation of people from over 190 different countries and 300 different ancestries.<sup>6</sup>

Further, when account is taken of all of the languages spoken in Australia, including those spoken by Indigenous peoples, the 2016 Census reported that over 300 different languages are spoken in Australian homes, and that approximately one-fifth (21%) of Australians speak a language other than English at home.<sup>7</sup> Of these, approximately 3.5% reported that they spoke English ‘not well’ or ‘not at all’.<sup>8</sup> There are also considerable variations in the composition and needs of different regions within Australia with, for example, 88% of people in Tasmania speaking only English at home as opposed to 58% in the Northern Territory.<sup>9</sup>

## III ACCESS TO JUSTICE

### A *The JCCD*

The Judicial Council on Cultural Diversity (‘JCCD’), which reports to the Council of Chief Justices, was formed to address the needs of Australia’s culturally and linguistically diverse society in accessing justice. Its purpose is to develop a framework

<sup>4</sup> Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016* (Catalogue No 3238.0.55.001, 18 September 2018) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>>.

<sup>5</sup> Australian Bureau of Statistics, *Australia’s Population by Country of Birth, Migration, Australia, 2017–18* (Catalogue No 3412.0, 3 April 2019) <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3412.0Main%20Features22017-18?opendocument&tabname=Summary&prodno=3412.0&issue=2017-18&num=&view=>>>.

<sup>6</sup> Australian Bureau of Statistics, *Cultural Diversity in Australia, 2016, Census of Population and Housing: Reflecting Australia — Stories from the Census 2016* (Catalogue No 2071.0, 28 June 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Cultural%20Diversity%20Article~60>>.

<sup>7</sup> Australian Bureau of Statistics, *Census Reveals a Fast Changing, Culturally Diverse Nation* (Media Release, 27 June 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/lookup/Media%20Release3>>.

<sup>8</sup> See Ingrid Piller, ‘FactCheck: Do “Over a Million” People in Australia Not Speak English “Well or at All”?’ *The Conversation* (online, 27 September 2018) <<https://theconversation.com/factcheck-do-over-a-million-people-in-australia-not-speak-english-well-or-at-all-101461>>.

<sup>9</sup> Australian Bureau of Statistics (n 7).

to support procedural fairness and equality of treatment for all court users regardless of race, colour, religion, or national or ethnic origin, and to promote public trust and confidence in Australian courts and the judiciary.

### B *The Complexity of Issues Posed by Cultural and Linguistic Diversity*

The existence of many and complex barriers to access to justice for members of Aboriginal and Torres Strait Islander communities is well documented. Tragically, these may result in some of the most vulnerable members of those communities failing to seek help through the court system when it is most required. As, for example, the JCCD report on Indigenous women's experience of the courts explained:

Factors such as intergenerational trauma and experiences of discrimination, racism and poverty all form a key part of Aboriginal and Torres Strait Islander experiences. In addition, Aboriginal and Torres Strait Islander women's perspectives of the justice system were shaped by dealings with the justice system overall — police, child protection, registry staff, corrections authorities, lawyers and judicial officers.<sup>10</sup>

Issues repeatedly raised included fear that reporting violence would result in the authorities removing children, and that the court was seen as a potentially unsafe place and not a place for resolving problems.<sup>11</sup>

Equally, while many of the barriers to justice differ, from the perspective of migrants and refugees, proceedings in our courts are proceedings in a foreign court, in a foreign land, conducted in a foreign language. Some may also fear and distrust government and the courts, particularly those seeking asylum from broken or corrupt states, and they are likely to lack an understanding of Australian law and court procedures.

The impression of justice in our courts that such litigants will take away with them will be affected in large part by the respect with which they are treated, how well they understand the proceedings, and how well they are understood. The importance of according respect within the system was borne out by the JCCD report on migrant and refugee women's experience of the courts, which found that positive experiences in the court system tended to assist in the healing process and, importantly also that:

women's satisfaction with court processes was, in the clear majority of cases, not linked to whether they received the outcome they sought. Rather, it was linked to how accessible the courts and court processes were, how women were treated and whether they felt listened to.<sup>12</sup>

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<sup>10</sup> Judicial Council on Cultural Diversity, *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts* (Report, 20 March 2016) 7 ('*Aboriginal and Torres Strait Islander Women's Experience of the Courts*').

<sup>11</sup> *Ibid* 7–8.

<sup>12</sup> Judicial Council on Cultural Diversity, *The Path to Justice: Migrant and Refugee Women's Experience of the Courts* (Report, 20 March 2016) 36–7 ('*Migrant and Refugee Women's Experience of the Courts*').

I have earlier referred to some of the statistics illustrating the extent of linguistic diversity within Australia. While indicative of the scale of the issue, these statistics still mask the extent and complexity of the problem of ensuring that those coming before our courts and tribunals are linguistically present. For example, the figure of 300 languages ignores the prevalence of dialects within those broad language descriptions which may play out in differences not only in accent or words, but also in grammatical structure and tense usage.<sup>13</sup> Further, a person who may communicate competently in ordinary day-to-day interactions, may nonetheless lack sufficient proficiency to understand the complexity of language and concepts in a courtroom setting and the stresses of that alien environment may compound these difficulties. Cultural and other sensitivities of the litigant or witness may also need to be taken into account.<sup>14</sup>

Finally, there are widespread concerns about the availability of professional interpreters, particularly at the higher levels of accreditation. Indeed, for over two thirds of the languages spoken in Australia (and often those spoken by new arrivals) there are no accredited interpreters.<sup>15</sup> Practitioners are also leaving the interpreting profession due to poor working conditions and rates of pay.<sup>16</sup>

Not surprisingly, therefore, language is one of the chief barriers faced by migrants and refugees seeking to engage the court system. Ensuring the availability of quality interpreters for court interpreting is an issue calling for a long term, strategic and collaborative approach with the interpreting profession.

### C *The Significance of Interpreters in the Legal System*

It is trite that participants in the justice system must have the ability to understand and to be understood in the proceedings: the entitlement to a fair hearing for all who come before our courts demands no less.<sup>17</sup> A failure to meet that requirement can result in a mistrial or, in the administrative context, an invalid decision. As such, for those with no, or limited, proficiency in the language of our courts and tribunals, interpreters make their participation possible and are key to the administration of justice.

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<sup>13</sup> See Justice Melissa Perry and Kristen Zornada, 'Working with Interpreters: Judicial Perspectives' (2015) 24(4) *Journal of Judicial Administration* 207, 209 n 17, citing *Shu Uan Eao v Federal Commissioner of Taxation* (2009) 76 ATR 886, 889 [11]–[13] (Middleton J).

<sup>14</sup> Perry and Zornada (n 13) 210.

<sup>15</sup> Judicial Council on Cultural Diversity, *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (Report, 2017) 41–52.

<sup>16</sup> See, eg, Jenny Earle, 'Access to Interpreters in the Australian Legal System' (1991) 62 (Winter) *Australian Law Reform Commission Reform Journal* 88, 91.

<sup>17</sup> Justice Melissa Perry and Kristen Zornada, 'Unfairness in Practice: Recent Decisions in Migration' (2014) 88(11) *Australian Law Journal* 776, 776.

The quality and accuracy of interpretation is vital at all stages of the legal process. For example, the 2014 Western Australian case of an Aboriginal speaker of Pintupi charged with murder has highlighted problems for non-native speakers of English in understanding the right to silence in police interviews. In a pre-trial hearing in this case, Hall J ruled that the suspect's confession to murder was not voluntary because he did not understand the right to silence, and he should have been provided with an interpreter.<sup>18</sup>

#### D *The JCCD Recommended National Standards*

In late 2017, the *Recommended National Standards for Working with Interpreters in Courts and Tribunals* adopted by the JCCD were published with the approval of the Council of Chief Justices. This followed consultation in the first instance to identify particular concerns arising from the experiences of Indigenous women and migrant and refugee women in the courts.<sup>19</sup> It also followed public consultation on draft recommended standards with relevant stakeholders, which provided valuable feedback taken into account in finalising the recommended standards.<sup>20</sup> Further, the working group which prepared the recommended standards (of which I was chair) was a specialist group including judges and tribunal members including from high volume jurisdictions, academics, and representatives of the interpreting profession including the Chief Executive Officer of the National Accreditation Authority for Translators and Interpreters ('NAATI').

The recommended standards are directed at interpreters and each of the participants in the justice system who engage with interpreters in the courtroom or in preparation for court hearings: judicial and tribunal officers, court and tribunal staff, and members of the legal profession. Linguistic, as well as physical, presence in the courtroom is best achieved if communication is seen as a shared responsibility between the interpreter and all participants in the justice system. The intention is to improve the court and tribunal system's engagement and management of translation and interpreting services.

Many of the recommended measures can be implemented by changes in practices without additional resources and costs. Model Rules, accompanied by a Model Practice Note,<sup>21</sup> were prepared to provide a mechanism whereby the recommendations may be given legal effect. It is intended that these documents can be adapted by courts and tribunals to meet their particular needs and resources.

Such measures illustrate the benefits to be gained from the legal community as a whole being proactive in developing practices and procedures to address the barriers

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<sup>18</sup> *Western Australia v Gibson* (2014) 243 A Crim R 68.

<sup>19</sup> *Aboriginal and Torres Strait Islander Women's Experience of the Courts* (n 10); *Migrant and Refugee Women's Experience of the Courts* (n 12).

<sup>20</sup> *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (n 15) v.

<sup>21</sup> *Ibid* 17, 24.

which restrict effective engagement with the legal system for many within our culturally diverse society. They also illustrate the importance of collaboration so as to learn from different communities about their needs and concerns and with other relevant stakeholders. As Bathurst CJ recently said, such steps are necessary ‘if we [as judicial officers] are to maintain our commitment to serving “all manner of people”’,<sup>22</sup> as barristers ‘to be servants of all’, and as a profession to provide the community with access to justice.

#### IV THE ROLE OF ANTI-DISCRIMINATION LAWS

Turning to my second theme, in Australia’s evolution into a culturally diverse society, the enactment of its anti-discrimination laws stands out as a critical juncture. These laws were borne of a period of great change in Australian history, where Australian domestic laws sought to embody the fundamental values that the international community accepted as the minimum standard. In 1966, the *Public Service Act 1902* (Cth) was amended so that women who were employed in the Australian Public Service no longer had to resign from their positions when they married. The early 1970s then saw a dynamic period of law reform that included no-fault divorce, environmental protection legislation, and the taking of the final steps to dismantle the White Australia Policy by removing race as a factor in Australia’s immigration provisions.<sup>23</sup> More so perhaps than ever before in Australian history, the law was being used as a positive force for social change.<sup>24</sup>

The first anti-discrimination legislation in Australia was the *Prohibition of Discrimination Act 1966* (SA).<sup>25</sup> The South Australian Parliament was quick to act as the *International Convention on the Elimination of All Forms of Racial Discrimination* had been unanimously adopted by the UN General Assembly less than a year earlier in December 1965 (106 votes to none). The need to guard against some of the evils of racial discrimination had long been recognised in South Australia, although tragically not acted upon in the colony’s early days. It is a little-known fact that the Letters Patent erecting and establishing the then province of South Australia in 1836 provided that nothing in the Letters Patent ‘shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation

<sup>22</sup> Chief Justice TF Bathurst, ‘Doing Right by “All Manner of People”’: Building a More Inclusive Legal System’ (Speech, Opening of Law Term Dinner, 1 February 2017) 4 <[http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2017%20Speeches/Bathurst%20CJ/Bathurst\\_20170102.pdf](http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2017%20Speeches/Bathurst%20CJ/Bathurst_20170102.pdf)>.

<sup>23</sup> ‘End of the White Australia Policy — 80 Days That Changed Our Lives’, *100 Years — The Australian Story* (ABC Archives, 2012) <<http://www.abc.net.au/archives/80days/stories/2012/01/19/3415230.htm>>.

<sup>24</sup> Margaret Thornton and Trish Luker, ‘The *Sex Discrimination Act* and Its Rocky Rite of Passage’ in Margaret Thornton (ed), *Sex Discrimination in Uncertain Times* (ANU Press, 1<sup>st</sup> ed, 2010) 25, 27.

<sup>25</sup> Chris Ronalds, *Anti-Discrimination Legislation in Australia* (Butterworths, 1979) 2.

or enjoyment ... of any Lands therein now actually occupied or enjoyed by such Natives ...'<sup>26</sup>

In Lionel Murphy's biography, author Jenny Hocking refers to a letter sent from Fred Hollows to Senator Murphy, then Commonwealth Attorney-General, describing Hollows' visit to the small town of Enngonia, located 100 km north of Bourke and close to the New South Wales border with Queensland.<sup>27</sup> On 9 November 1973, Hollows and his team arrived in Enngonia where he was carrying out a trachoma eradication program through the Bourke District Hospital. The only accommodation in Enngonia was the Oasis Hotel. On arriving, Hollows was approached by the licensee and told that the Aboriginal members of his party would not be served in the hotel's bar and lounge area. If they required refreshments, he said, they must walk to the back of the hotel where they would be served through a small hatchery whilst remaining outside.

Refusing to remain at the hotel, Hollows wrote to Senator Murphy stating that the 'discrimination makes my work both as an ophthalmologist to the total community and as a person especially interested in improving Aboriginal health very difficult'. Twelve days later, the Racial Discrimination Bill was introduced in the Australian Parliament which would make unlawful the very conduct employed by the licensee at the Oasis Hotel.

Nonetheless, at the time the legislation was seen by some as inadequate in addressing the roots of racism in Australian society. A commentator, writing when the *Racial Discrimination Act 1975* (Cth) ('the Act') became law, observed that:

[d]iscrimination is not a mere growth upon the body politic which can be neatly removed by skilful legislative surgery. Rather, it is a symptom of an ill that is within that body, a manifestation of a state of ill-health which requires treatment as a whole.<sup>28</sup>

While it cannot be denied that the Act has not eradicated racial discrimination, to expect it to do so would be unrealistic. Nonetheless, as the Race Discrimination Commissioner wrote in reflections on the 40<sup>th</sup> anniversary of the Act: 'While no law can ever eradicate the social evil of racism — no law can ever banish hatred, ignorance and arrogance — an instrument like the *Racial Discrimination Act* does make us stronger and more united.'<sup>29</sup>

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<sup>26</sup> GL Fischer, 'South Australian Colonization Act and other Related Constitutional Documents' (1966) 2(3) *Adelaide Law Review* 360, 368–9.

<sup>27</sup> Jenny Hocking, *Lionel Murphy: A Political Biography* (Cambridge University Press, 1997) 189.

<sup>28</sup> Brian Kelsey, 'A Radical Approach to the Elimination of Racial Discrimination' (1975) 1(1) *University of New South Wales Law Journal* 56, 62.

<sup>29</sup> Tim Soutphommasane, 'The Racial Discrimination Act at 40' (2015) 89(5) *Australian Law Journal* 303, 305.

The Act also heralded a new era for anti-discrimination protections with largely bipartisan support. In 1977 the Attorney-General, Bob Ellicott, introduced the Human Rights Commission Bill 1977 (Cth) and announced the intention to introduce Sex Discrimination legislation. Four years later in 1981, Senator Susan Ryan, the first female Senator for the Australian Capital Territory<sup>30</sup> and first woman to hold a Cabinet post in a federal Labor Government,<sup>31</sup> introduced a Sex Discrimination Bill as a private member's Bill. That Bill was designed to give effect to Australia's international obligations. There seems little doubt that Senator Ryan's Bill was motivated in part by her own experience. Her teaching career was cut short when, after becoming engaged, she was told that she could not complete her studies and would have to repay her scholarship funds. Her male peers, however, were free to marry and continue their studies on full scholarships.<sup>32</sup>

The road to erect these reforms was not always smooth. It was not until 1984 that Senator Ryan's vision of a federal law rendering discrimination on the grounds of sex unlawful was realised, although such laws had existed earlier at state and territory level. The *Racial Discrimination Act 1975* (Cth) barely survived a challenge to its constitutional validity in 1982 in the High Court.<sup>33</sup> And there was a long and heated debate during 1983 over the Sex Discrimination Bill, with warnings of social disaster and an 80,000 person petition opposing the Bill.<sup>34</sup> This suggests that laws such as these sought to shape, rather than necessarily to reflect, popular opinion at the time, capturing the aspirational values of a more equal and fair society.<sup>35</sup>

The first major litigation under this suite of new laws was *Ansett Transport Industries v Wardley* ('*Ansett*'), decided in 1980.<sup>36</sup> The High Court held that Deborah Wardley's application for employment as a trainee air pilot could not be rejected because of her gender. While the Airline Pilots Agreement was deemed to be an award under Commonwealth law and did not constrain the airline's ability to choose its employees or terminate their employment, that did not exclude the operation of the *Equal Opportunity Act 1977* (Vic). The High Court held that there was no inconsistency between the State and Commonwealth laws. Nonetheless, as Beth Gaze remarked on the 25<sup>th</sup> anniversary of the *Sex Discrimination Act 1984* (Cth), the *Ansett* case illustrates all

<sup>30</sup> Kelly Burke, 'Another First as Trailblazer Ryan Fired up by "Perfect" Job', *Sydney Morning Herald* (online, 1 August 2011) <<http://www.smh.com.au/national/another-first-as-trailblazer-ryan-fired-up-by-perfect-job-20110731-1i6ip.html>>.

<sup>31</sup> Australian Human Rights Commission, 'The Hon Susan Ryan AO Former Commissioner, 2011–2016', *Age And Disability Discrimination Commissioner The Hon Susan Ryan AO* (Web Page) <<https://www.humanrights.gov.au/about/commissioners/age-and-disability-discrimination-commissioner-hon-susan-ryan-ao>>.

<sup>32</sup> Burke (n 30).

<sup>33</sup> *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168.

<sup>34</sup> Neil Rees, Katherine Lindsay and Simon Rice, *Australian Anti-Discrimination Law: Text, Cases, and Materials* (Federation Press, 2008) 18; Thornton and Luker (n 24) 28.

<sup>35</sup> Neil Rees, Katherine Lindsay and Simon Rice (n 34) 3.

<sup>36</sup> *Ansett Transport Industries (Operations) Pty Ltd v Wardley* (1980) 142 CLR 237.



too well the difference between a legal victory and broad social change,<sup>37</sup> as female airline pilots are still significantly in the minority.<sup>38</sup>

The limited capacity of law alone to effect social change was recognised when these laws were enacted. Consequently, education is one of the express functions of anti-discrimination laws. This function is clearly essential if the irrational and unconscious fears that drive racism are to be addressed. It is only with the elimination of such fears that an environment may be created in which mutual respect between people of different cultural and ethnic backgrounds can develop to the benefit of each of us and of society as a whole.

## V CULTURAL DIVERSITY IN THE LEGAL PROFESSION AND THE JUDICIARY

Despite Australia's diverse society, the Human Rights Commission recently reported that in corporate Australia, the ranks of senior leadership in ASX 200 companies were overwhelmingly dominated by those of Anglo-Celtic and European background,<sup>39</sup> and that of 39 university vice-chancellors, only one is from a non-European background, while the others have an Anglo-Celtic or European background.<sup>40</sup>

The legal profession fares little better. For example, a report prepared by the Asian Australian Lawyers Association in 2015 found that while Asian Australians comprise approximately 9.6% of Australia's population, they account for only 3.1% of partners in law firms nationally and 1.6% of barristers.<sup>41</sup>

As I explained in an article in the South Australian Law Society *Bulletin* on women in the courtroom, it is important that the increasingly culturally diverse nature of society finds reflection in the composition of the legal profession and ultimately in senior partners, senior appointments at the Bar, and judicial appointments:

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<sup>37</sup> Beth Gaze, 'The Sex Discrimination Act at 25: Reflections on the Past, Present and Future' in Margaret Thornton (ed), *Sex Discrimination in Uncertain Times* (ANU Press, 1<sup>st</sup> ed, 2010) 107, 110.

<sup>38</sup> See Hugh Morris, 'Women Airline Pilots: The Country with the Most Female Pilots will Surprise You', *Australian Financial Review* (online, 12 September 2018) <<https://www.afr.com/news/world/asia/women-airline-pilots-the-country-with-the-most-female-pilots-will-surprise-you-20180912-h159p5>>.

<sup>39</sup> Australian Human Rights Commission, *Leading for Change: A Blueprint for Cultural Diversity and Inclusive Leadership Revisited* (Report, April 2018) 9–10 ('*Leading for Change Revisited*'); see also Australian Human Rights Commission, *Leading for Change: A Blueprint for Cultural Diversity and Inclusive Leadership* (Report, July 2016) 6 ('*Leading for Change*').

<sup>40</sup> *Leading for Change Revisited* (n 39) 10.

<sup>41</sup> Asian Australian Lawyers Association, *The Australian Legal Profession: A Snapshot of Asian Australian Diversity in 2015* (Report, 14 April 2014) 4.

Seeking to achieve these goals is vital because it contributes to maintaining and promoting public confidence in the legal system generally and in the judiciary. Both the appearance of justice and its realisation are equally essential. People must feel confident that we have an independent Bar and an independent and impartial judiciary if they are to have confidence in bringing disputes to the courts for resolution, and in this diversity can play a significant role.

This doesn't mean that our different cultural backgrounds or gender lead us to make different decisions. Ultimately as judges we are all constrained by proper judicial methods of reasoning. Nonetheless, our experiences help us all to appreciate the impact that our decisions may have on individuals and on society generally, and to understand how to make our processes fairer. Ideally, the legal system as a whole should be a microcosm of Australian society.<sup>42</sup>

These observations apply equally to court and registry staff, as it is necessary as an aspect of public confidence that institutions involved in the administration of justice reflect the composition of society.

To effect real change, therefore, a proactive approach is required. We need to be proactive in our desire to learn from diversity, and self-reflective about our biases and prejudices. In this, training and education remain pivotal, as the Human Rights Commission report, *Leading for Change*, recommends.<sup>43</sup> We must also be aware of the prejudices that exist in the institutions and professions within which we work. For example, our workplaces too often reward leadership styles that may over-value self-promotion and assertiveness, while undervaluing or misinterpreting the deference and respect for seniority which is common in Asian leadership styles.<sup>44</sup>

#### E *Looking Forward — Drawing Inspiration from the Past*

In looking forward, I believe that we can draw inspiration from significant improvements in the participation of women in the Australian legal profession as evidence that the legal profession will adapt to reflect the diversity of Australian society. This is so even though there is some way yet to go in achieving gender equality within the legal profession.

The story of the Honourable Justice Mary Gaudron, the first woman to sit on the bench of the High Court, is one among others which has particularly inspired me. Despite the heights which her Honour achieved, in 1963 she was required to resign from her position with the Commonwealth Crown Solicitors' Office when she

<sup>42</sup> Justice Melissa Perry, 'There Should Be More Women in the Courtroom: Justice Perry' (2015) 37(7) *The Bulletin (Law Society of South Australia)* 12, 13.

<sup>43</sup> *Leading for Change* (n 39) 3.

<sup>44</sup> Diversity Council of Australia, 'Cracking the Cultural Ceiling: Future Proofing Your Business in The Asian Century', *Cracking the Cultural Ceiling* (Web Page, 2015) <<https://www.dca.org.au/research/project/cracking-cultural-ceiling>>.

married. The *Public Service Act 1902* (Cth) deemed her as a female member of the public service to be retired upon her marriage.<sup>45</sup>

Upon graduating from Law School with a University Medal in Law, Justice Gaudron was unable initially to buy into chambers at the Bar on the basis of her gender,<sup>46</sup> and when her Honour was appointed to the Commonwealth Conciliation and Arbitration Commission in 1974, the *Sydney Morning Herald* ran the headline: 'The Law and the Laundry. Australia's Youngest Judge Has No Time for the Ironing'.<sup>47</sup>

Overcoming all of these barriers and slights, her Honour had a brilliant career at the Bar followed by a brilliant career on the Bench. Her other achievements included her appointment as New South Wales Solicitor-General. Her Honour was not only the first woman in Australia to hold the office of Solicitor-General, but also the youngest person to do so.<sup>48</sup>

As Justice Margaret McMurdo, the former President of the Queensland Court of Appeal, remarked upon Justice Gaudron's retirement, Justice Gaudron is 'proof that no doors are permanently closed, even if sometimes they do not seem very open'.<sup>49</sup>

## VI CONCLUSION

The law does not present a perfect solution to the issue of discrimination in a culturally diverse society. Anti-discrimination laws can never alone eradicate discrimination. Education remains key, among other measures, to bring about change and to break down both conscious and unconscious biases.

Universities in particular provide a virtually unparalleled opportunity for people from culturally and linguistically diverse backgrounds to meet, to form friendships and professional associations, and to learn that the differences between us are less significant than what we share. We all have much to learn from each other. That learning is enhanced when the cultural diversity within society is reflected in the composition of the different communities within which we mix throughout our lives, both professionally and personally.

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<sup>45</sup> See Chief Justice Marilyn Warren, 'Leading from the Bench: Women Jurists as Role Models' (Speech, American Chamber of Commerce in Australia 'Women in Leadership' Breakfast, Melbourne, 12 February 2015) 16. The law which required women to resign was abolished in 1966.

<sup>46</sup> See Pamela Burton, *From Moree to Mabo: The Mary Gaudron Story* (University of Western Australia Publishing, 2010) 77–9. Eventually, her Honour shared Chambers with Janet Coombs.

<sup>47</sup> Justice Margaret A McMurdo, 'Speech Proposing a Toast to Retiring Justice Mary Gaudron' (Speech, Australian Women Judges Dinner, Sydney, 22 February 2003) 2–3.

<sup>48</sup> *Ibid* 3.

<sup>49</sup> *Ibid* 5.

The *Adelaide Law Review*, through its rigorous scholarship and by publishing articles highlighting issues facing culturally diverse groups such as Indigenous Australians, has made commendable progress in furthering this goal. I am confident that articles in the next 40 volumes of the *Review* will continue to expand upon this important contribution.