

**Crime & Misconduct & OLAB 2014
Submission 027**

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The Research Director
Legal Affairs and Community Safety Committee
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By email: lasc@parliament.qld.gov.au

Dear Research Director,

Submission on the Crime and Misconduct and Other Legislation Amendment Bill 2014

On 19 March 2014, the Attorney-General and Minister for Justice, the Honourable Jarrod Bleijie MP, introduced the *Crime and Misconduct and Other Legislation Amendment Bill 2014* ("the Bill") into the Queensland Parliament.

The Women Lawyers' Association of Queensland ("the WLAQ") welcomes the call for public submissions on the Bill and further consultation in respect of the proposed amendments.

The WLAQ was originally formed in 1978 with the key objectives of supporting women in the legal profession and promoting their interests. Over the thirty-six years of its existence, the WLAQ has grown into a robust, flexible, diversified and supportive unit, whilst remaining committed to its original objectives. The WLAQ's constitutional objects include, *inter alia*, to:

- represent, advocate for and promote the interests of women in the legal profession;
- provide opportunities for the development and advancement of women in the legal profession; and
- participate in the reform of the law and the administration of the law particularly as affecting women and children.

The WLAQ advocates for the interests of women working in the law and promotes the development and advancement of women in the legal profession. The WLAQ is empowered to contribute to debate on reform and the administration of the law, particularly as it affects women and children.

The WLAQ boasts a diverse membership comprising practitioners from small, large and medium-sized private law firms, community legal centres and not-for-profit organisations, sole practitioners, barristers, academics, government legal officers and members of the judiciary. The Association is affiliated with the peak body for women lawyers' in Australia, the Australian Women Lawyers ("the AWL"), and has a representative on the Executive Committee of the AWL.

The WLAQ has considered, in detail, the following proposed amendments to the *Crime and Misconduct Act 2001* (“the Act”):

1. The removal of the term “Chairperson”; and
2. The removal of a nominated position for women through the omission of section 230(4) of the Act.

For the reasons outlined in this submission, the WLAQ maintains serious concerns in relation to these proposed amendments to the Act. The purpose of this submission is to formally object to the reintroduction of gendered language into Acts of Parliament and the removal of a nominated position for a woman.

Our comments are made in the context of the WLAQ’s interest in ensuring that women are represented fairly and not prejudiced by these amendments.

The WLAQ submits that:

1. The word “Chairman” should be removed from the Bill and the word “Chairperson”, or other gender-neutral terminology (e.g. “Chair”), should be adopted; and
2. The current requirement in the Act that one of the part-time commissioners be a woman should be retained.

1. THE USE OF GENDERED LANGUAGE IN THE ACT

While the Bill amends the Act in substantive ways¹, the Bill also removes the word “Chairperson” from the Act which has been replaced by the word “Chairman”.

There is no reason cited in the Explanatory Notes accompanying the Bill, or in the First Reading Speech of the Attorney-General and Minister for Justice, for the introduction of this gendered language.

The use of non-discriminatory and neutral language, whether it relates to gender, race, culture, age, religion, disability or other discrimination, has long been an adopted practice in legislative drafting across Australia and in Queensland.

Gender-neutral terminology was formally introduced in the Commonwealth Office of Parliamentary Counsel in 1984², and on a Commonwealth level, legislative drafting using gendered language is generally avoided.

The Commonwealth directions³ in this regard include, *inter alia*:

1. Where a masculine personal pronoun is used it must always be accompanied by a feminine personal pronoun (and vice versa) except in the very rare case of legislation intended to apply to people of one sex but not the other (e.g. maternity leave legislation);

¹ In addition to making consequential amendments to other Acts.

² See Commonwealth Office of Parliamentary Counsel, *Drafting Manual*, Edition 3.0 (2012) para 99-102.

³ Commonwealth Office of Parliamentary Counsel, *English Usage, Gender-Specific And Gender-Neutral Language, Grammar, Punctuation And Spelling*, Document Release 4.2 (2013) Direction 2.1.

2. The use of “Chair” should be used (instead of “Chairperson” or “Chairman”);
3. Words ending in “man” which might reasonably be seen as importing the masculine gender should be avoided in favour of gender-neutral words; and
4. If amending legislation that establishes an office of “Chairman”, it should be replaced by “Chair”.

The Commonwealth Office of Parliamentary Counsel’s reasons for drafting directions to adopt gender neutral language was to ensure that the language of legislation is more inclusive, rather than exclusive and discriminatory.

The Queensland Office of Parliamentary Counsel has, until recent times, generally reflected and adopted the Commonwealth’s approach to avoiding the use of gendered language in legislation. Despite the proposed return to the use of “Chairman”, it is noted that the Queensland Government continues to claim it is committed to anti-discrimination principles and inclusive communication.⁴ In fact, the Queensland Cabinet Handbook⁵ states that the Government supports gender diversity and also promotes gender balance.

It is difficult to see how the use of gendered language in the Bill accords with those policies or illustrates a commitment to anti-discrimination and inclusiveness.

The WLAQ submits that the introduction of gendered terminology brings with it the risk that women will be perceived as having less value or less standing than their male colleagues within the legal profession, and / or within the community generally.

In addition, section 32B of the *Acts Interpretation Act* 1954 states that in Acts of Parliament, “words indicating a gender include each other gender”. The use of the word “Chairman” is, therefore, not likely to have any different legal effect from the existing use of “Chairperson”. In the absence of any substantive reasons for the change, the WLAQ are perplexed as to the necessity of making such a divisive change, particularly when it is contrary to well-established drafting practices.

It is also difficult to see how the introduction of gendered language meets the policy objectives set out in the Explanatory Notes accompanying the Bill.

In fact, the Explanatory Notes make it clear the introduction of the Bill is in response to two recent reviews of the Crime and Misconduct Commission (the Commission)⁶ and the Bill is necessary to implement the recommendations that came out of those reviews. These reviews do not recommend a change in terminology to “Chairman”, nor is one required in order to implement the proposed changes.

Actively changing the terminology in the Bill to re-introduce “Chairman” rather than “Chairperson” sets Queensland back decades in recognising the need for equal opportunity.

⁴ Queensland Government, *Legal Obligations* (17 May 2011) Queensland Government <<http://www.qld.gov.au/web/cue/module8/legal.html>>.

⁵ Queensland Government, ‘Governing Queensland’ (The Queensland Cabinet Handbook, Department of the Premier and Cabinet, October 2013).

⁶ The review by the Independent Advisory Panel (constituted by the Honourable Ian Callinan AC and Professor Nicholas Aroney (Callinan/Aroney)) of the *Crime and Misconduct Act 2001* and related matters; and the inquiry by the Parliamentary Crime and Misconduct Committee into the CMC’s release and destruction of Fitzgerald Commission of Inquiry documents.

2. THE REMOVAL OF A NOMINATED POSITION FOR WOMEN FROM THE ACT

The Bill also removes the requirement in the current Act that one of the part-time commissioners be a woman.

Section 230(4) of the Act as it currently stands provides that one of the part-time commissioners must be a woman. Clause 38 of the Bill omits section 230 of the Act.

Again, there does not appear to be any explanation or reason for this change in the Explanatory Notes accompanying the Bill or in the First Reading Speech of the Attorney-General and Minister for Justice.

Women are under-represented in the highest positions in the legal and political systems in Queensland, including in Parliament⁷, the Courts⁸ and in the Executive Government⁹. In order to achieve a truly representative legal and political system, it is important women are represented in senior positions within those systems.

The Law Council of Australia's NARS Report (National Attrition and Re-engagement Study), published on 14 March 2014, found that a relative lack of women in senior leadership positions within the legal profession is seen to contribute to a male-dominated culture in which it is difficult for women to progress.¹⁰

The WLAQ supports the appointment by merit to positions within the Commission, but submits the requirement to ensure at least one woman is appointed would not preclude appointments being made on merit. It would merely ensure one position is reserved for a woman of merit, which has the advantageous result of achieving a more diverse and representative Commission.

3. POTENTIAL FOR PROMOTING UNCONSCIOUS BIAS

There is a large body of literature that documents the phenomenon of gender bias within many fields, including the law.¹¹ Such bias can be conscious or unconscious. Unconscious bias occurs when there is a perception individuals from one group, usually the majority, have greater capacity or ability to perform a task than individuals from another group, usually the minority.

Unconscious bias affects perceptions as to who is suitable for a role and makes it difficult for the merit of a candidate in the minority to be considered on truly equal terms with the majority. It is the mere fact that we are unaware of our unconscious perceptions that makes it difficult to identify and overcome the bias.

⁷ See Queensland Parliament, *Member List* <<https://www.parliament.qld.gov.au/members/current/list>>. Only 19 of 89 members of the current Parliament are women.

⁸ See The Honourable Justice Margaret McMurdo AC, *A Report Card on Gender Equality at the Queensland Bar and Bench and the Invisible Women* (21 March 2014) Hearsay <http://www.hearsay.org.au/index.php?option=com_content&task=view&id=1736&Itemid=35>.

⁹ See Queensland Parliament, *Current Ministers* <<https://www.parliament.qld.gov.au/members/current/list/current-ministers>>. Only two of 19 Cabinet members in the current Government are women.

¹⁰ Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report* (2014) 76.

¹¹ See Regina Graycar and Jenny Morgan, *The Hidden Gender of the Law* (1990); and Regina Graycar (ed), *Dissenting Opinions: Feminist Explorations in Law and Society* (1990)

A number of studies have provided evidence that gender bias, whether conscious or unconscious, inhibits the careers of women within the law.¹² The 2014 NARS Report found that many female practitioners had experienced unconscious bias and the Law Council of Australia set out steps and strategies to avoid, and reduce that bias.¹³

In male dominated fields, such as Parliament, the Court and the Executive particularly at higher levels,¹⁴ unconscious bias can be compounded unintentionally.

The implication of introducing gendered terminology is that women are, by reason of their gender, excluded from taking a role where the word 'man' is part of the role's title. In this regard, the use of gender neutral language encourages and facilitates inclusiveness.

Additionally, the removal of the mandatory woman's position compounds the appearance of, and potential for, unconscious bias.

Both changes, separately or together, seriously undermine equal opportunity principles and increase the risk of unconscious bias occurring.

CONCLUSION

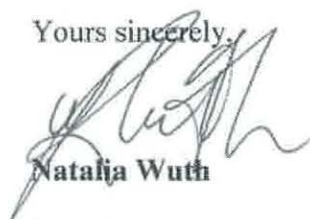
The WLAQ values diversity and considers equal opportunity for all persons, including women, is an expectation within the general community and that value should be, and in fact must be, reflected in our legislation at the most fundamental level by adopting gender neutral terminology in legislation.

The WLAQ considers that the under-representation of women in senior positions in our legal and political system leads to a less diverse, representative and inclusive system. The current requirement that one part-time commissioner be a woman assists in promoting gender equality.

The WLAQ strongly recommends that the word "Chairman" be removed from the Bill, and "Chairperson", or other appropriate gender-neutral terminology, be used.

The WLAQ further recommends that the Bill be amended to retain the requirement that one position on the Commission be reserved for a woman.

Yours sincerely,



Natalia Wuth

President



Kylie Hillard

Vice President



Rachael Taylor

Vice President

Women Lawyers Association of Queensland Inc.

¹² See Terry Hutchinson and Heather Skousgaard, *Women in the Queensland Legal Workplace: A Snapshot* <<http://www.deakin.edu.au/buslaw/law/dlr/docs/vol13-iss1/vol13-1-2.pdf>>

¹³ Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report* (2014) 76, 84-85.

¹⁴ Refer to footnotes 7, 8 and 9 relating to number of women in these areas.