

Legal Affairs and Community Safety Committee

Submission: Crime and Misconduct and Other Legislation Amendment Bill 2014

This submission concerns the Crime and Misconduct and Other Legislation Amendment Bill 2014. It specifically addresses:

1. The proposed change of terminology from ‘chairperson’ to ‘chairman’; and
2. The removal of the one nominated position for a woman as a part-time commissioner.

1. ‘Chairperson’ to ‘Chairman’

- 1.1. The Act amended by the Bill refers to the position of ‘Chairperson’.¹
- 1.2. The Bill in its policy objectives makes no reference to a change in nomenclature of the governance structure of the CMC. The change is implicit, appearing without explanation first on page 3 of the Explanatory Notes in a provision citing the qualifications of the five commissioners. The change is made without apparent reason.
- 1.3. Subsequently the Bill provides for the omission of references to ‘chairperson’ and addition of ‘chairman’.
 - 1.3.1. See eg clause 22(2).
 - 1.3.2. All new provisions refer to ‘chairman’ not ‘chairperson’.
- 1.4. The Bill also introduces the role of ‘deputy chairman’: see eg clause 35.
- 1.5. ‘Chairman’ is sexist language because in signifying a man, women are by implication excluded.² Language is an important signifier of equal rights for women particularly where women depend on statute law to abrogate the effects of common law discrimination.³ The Australian Law Reform Commission has pointed out that ‘[g]ender inclusive language plays an important role in including both women and men in the consideration of the law and eliminating stereotypes.’⁴
- 1.6. The widespread contemporary use of gender-neutral and non-discriminatory language in public documents and in legal documents, including in the prescribed style of the Queensland Government⁵ reflects contemporary good practice in drafting. The change in this Bill from ‘chairperson’ to ‘chairman’ breaches contemporary norms of gender neutrality and non-discrimination and thus supports stereotypes that exclude women from public life.
- 1.7. Queensland Government drafting principles provide that:

Plain English involves the deliberate use of simplicity to achieve clear, effective communication. It is commonly considered to be the best technique for effective communication in legislation.⁶

¹ See dictionary, Schedule 2, *Crime and Misconduct Act 2001*. This was formerly the chairperson of the Criminal Justice Commission – see section 351(2) *Crime and Misconduct Act 2001*.

² See eg Dale Spender, *Man Made Language* (2nd ed, 1998).

³ See eg Australian Law Reform Commission, ‘Equality Before the Law: Justice for Women: Part II’ (Report 69 Part II, 1994), [8.12].

⁴ *Ibid*, [8.27]

⁵ Queensland Government, Department of Premier and Cabinet, *The Role of the Drafter* ‘Plain English [3.5.1]’ <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/drafting-process/drafter.aspx#3.5.1>. See also for example Queensland Government *Writing for Web: Legal Obligations* ‘Anti-discrimination’ <http://www.qld.gov.au/web/cue/module8/legal.html#laws>

⁶ Queensland Government, *The Role of the Drafter*, *Ibid*.

While it is likely that section 32B of the *Acts Interpretation Act 1954* (Qld) will mean that ‘chairman’ includes ‘chairwoman’ the result is that a secondary instrument must be used to interpret the language of the Bill, resulting in a lack of drafting clarity in breach of the principles of Plain English adopted by the Queensland Government.

- 1.8. The return to gendered and discriminatory language in this Bill renders the term ‘chairman’ inconsistent with parliamentary drafting elsewhere.⁷ Section 4(3)(k) of the *Legislative Standards Act 1992* requires legislation to be ‘unambiguous and drafted in a sufficiently clear and precise way.’ Additionally, the Queensland Government Drafting Principles require that:

...editorial and publishing check aims (sic) to achieve:

- consistency of language both within the legislation and with other Queensland legislation
- consistency of formats, styles and expressions.⁸

The proposed change in the Bill is inconsistent with other legislation and is therefore inexplicably in breach of legislative drafting standards.

2. Removal of a nominated position for a woman

- 2.1. Section 230(4) of the *Crime and Misconduct Act 2001* provides that at least one of the part time commissioners is to be a woman. Section 230 is omitted by clause 38 of the Bill.

- 2.2. Women remain under-represented in parliament,⁹ in the courts,¹⁰ and in executive government.¹¹ The Australian Law Reform Commission has found that the institutions of the law must be opened up to women to achieve justice for all:

...those who practice the law and those who administer and enforce the law must look beyond their own life experiences if they are to know and accept the different perspectives of those who now invoke the law’s protection or who answer to it for their acts and omission. They must look beyond their own life experiences if they are to administer equal justice.¹²

Further:

The inadequacy of the law's response to women's experiences, needs and perspectives is fundamentally an issue of fairness. For that reason, the law's inability to ensure equality and justice for women challenges the very basis of the legal system. Bias is whatever prevents the legal system being fair.¹³

⁷ See for example use of ‘chairperson’ in section 17 of the Queensland Training Assets Management Authority Bill 2014; section 302 of the *Local Government and Other Legislation Amendment Act 2013*; section 17 of the *TAFE Queensland Act 2013*. Contrast the *Health Legislation Amendment Act 2013*, which in section 18 replaces ‘chairperson’ with ‘chair’.

⁸ Queensland Government, Department of Premier and Cabinet, *The Role of the Drafter ‘Quality Assurance Checks – The Final Process’* [3.5.4] <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/drafting-process/drafter.aspx#3.5.4>.

⁹ Just 30 per cent nationally, in 2012. See Joy McCann and Janet Wilson, ‘Representation of Women in Australian Parliaments’ *Parliament of Australia Background Notes* (7 March, 2012) http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/Womeninparliament

¹⁰ 33.58 per cent nationally. See Australian Women Lawyers *Gender in the Australian Judiciary 1995 v 2013* Media Release (4 July 2013)

http://www.australianwomenlawyers.com.au/uploads/publications/F_4_July_2013_AWL_Media_Release_Gender_in_the_Australian_Judiciary.pdf

¹¹ In Queensland, women form only two out of 19 ministers under the Newman Government.

¹² Australian Law Reform Commission, above n3, citing Justice Mary Gaudron, [2.7].

¹³ Ibid.

In light of the disproportionate number of men who rise to executive positions and positions of authority in the institutions of the law despite suitably qualified women, there will inevitably be a bias – based on the uniformity of experience of those in positions of power. The existing provision for one woman part time member serves to mitigate somewhat the implicit and inevitable bias of an entirely male commission.

2.3. Statements have been made that public appointments are made ‘by merit’,¹⁴ there is no suggestion that the woman member not be equally as qualified as other members; simply that one place is reserved for a woman of merit. The concept of ‘merit’ is extensively critiqued in the literature as a means of excluding those who do not form part of the dominant group.¹⁵

2.4. There is no stated explanation or rationale for the change. Instead, based on the findings of the Australian Law Reform Commission Report cited above, the stated goals of improving:

- public confidence in the CMC; ...
- operational and corporate governance structures within the CMC;
- the current culture within the CMC; ...
- internal processes and practices in the CMC...¹⁶

will be better served if gender bias, implicit in the structures of law and law enforcement, is addressed. Not only are the purposes of the Bill not served by this change, but they may be enhanced by retaining the nominated position for a woman.

Summary

- Neither of these changes can be justified on the grounds of the stated policy objectives.
- Both changes fail to reflect non-discriminatory law-making and are exclusionary of women and women’s experience.
- The change in nomenclature represents poor drafting and introduces inconsistency, lack of clarity and therefore ambiguity into the law.
- The change in nomenclature breaches legislative drafting standards.
- The removal of the nominated position for a woman leaves open a greater possibility of implicit bias within the organisational structure through the omission of women’s perspectives, contrary to the stated policy objectives.



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¹⁴ Amy Remeikis, ‘Search Begins to Replace Walter Sofronoff’ *Brisbane Times* (26 March 2014) <http://www.brisbanetimes.com.au/queensland/search-begins-to-replace-walter-sofronoff-20140326-35h4r.html>.

¹⁵ See eg Margaret Thornton, ‘Otherness on the Bench: How Merit is Gendered’ (2007) 29 *Sydney Law Review* 391.

¹⁶ Explanatory Notes, Crime and Misconduct and Other Legislation Amendment Bill 2014, 1.