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WOMEN IN THE INSTITUTIONS OF THE LAW

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By Kate Galloway

It has been almost 20 years since the ground-breaking report of the Australian Law Reform Commission (ALRC), *Equality Before the Law: Justice for Women*. The two-volume report exposed a variety of ways in which the law failed to address justice for women, and made a number of recommendations to address this. One of the areas addressed in the report is women's participation in legal and political institutions – both of which were found to lack the contribution of women.

The comparative lack of women in positions of influence within the legal profession affects women's access to justice. A woman who needs to make use of the law finds herself in a doubly alien environment, as a non-lawyer and as a woman.

Additionally,

The equal participation of women in political institutions and the legislative process is clearly essential if laws are to give equal weight to the concerns, needs and perspectives of women. Not only does the relative absence of women from positions of political power help undermine the serious consideration of women's claims to equality, but legislation is the only means of effecting change in the law quickly and directly.

Have things changed since this 1994 report? Not as much as we might have hoped.

The Legal Profession

In 1994, the ALRC reported that

Women make up 50% of law school graduates, and 25% of the legal profession as a whole. However, women leave the profession at a much higher rate than men, and they are clustered in the lower ranks of the profession.

Today, 61.4% of law graduates are women and according to Australian Law Council figures, 46% of lawyers practising in Australia are women. Similar figures have been reported for female solicitors in New South Wales in 2011.

Despite four female High Court justices, a female Chief Justice of the Family Court, female federal Attorney-General, female deans of law schools, heads of law reform commissions, Chief Justices of state Supreme Courts and Presidents of their courts of appeal the numbers of women in the upper levels of the profession remains disproportionately low.

In a 2013 survey, women account for only 20% of partners in Australian law firms. In other recent data, women account for only 20% of the bar where women barristers have shorter appearance times than their male counterparts. Women constitute 16% of the bench in the Federal Court.

While women in leadership roles are perhaps double those of 20 years ago, they still fail to reflect the proportion of women who have entered the profession over these two decades. These figures reflect the associated problems of retention and promotion.

Last year the Victorian Equal Opportunity and Human Rights Commission published its [report on sex discrimination](#), harassment and flexibility within the Victorian legal profession. The report reflected similar studies conducted in Queensland, where the findings of a [2003 Queensland Law Society Membership Survey](#) suggested that there was a priority need for a more inclusive work environment, and the need to foster an awareness of discrimination, harassment and bullying in the workplace.

It is perhaps no surprise that women leave a profession where they experience discrimination and harassment. Likewise, if women's experiences of harassment and sex discrimination are reflective of the culture of the profession it is no wonder that they are not promoted.

Despite the exceptions noted above, in recent weeks there have been calls in Australia and the UK for more women judges. In the UK, Supreme Court Justice Lady Hale has suggested that positive discrimination may be required to redress gender imbalance in a culture that is "out of step with the rest of the world". Similar calls in other jurisdictions indicate that the lack of diversity on the bench is a remarkably familiar scenario.

Women fare no better in political life in Australia.

Parliament

In 2012, despite being 50.2% of the Australian population women's overall level of representation in Australian parliaments was only 30%. Women have the *right* to participate in the political process and institutions of governance, but the extent to which they hold power is vastly under-represented.

The [Inter-Parliamentary Union](#) identifies political processes such as the way electoral systems are structured, temporary measures such as quotas and political opportunity as common among countries with higher female representation. These are largely lacking in the Australian context. In addition, recent Australian parliamentary background papers identify a number of practical barriers to women's engagement in parliament.

Despite removing legal impediments to women's political participation, and with goodwill in pre-selecting women and a receptive electorate, the very structure and operation of the parliament itself closes the opportunity for many women who might otherwise participate. Sitting hours, lack of child-care, inability to bring children into parliament all presuppose a particular capacity for undertaking work as a parliamentarian, and thereby for taking institutional power. These indicate the ongoing assumption that women have responsibility for rearing children.

Women's overall parliamentary participation is not, however, reflected in Australian ministries. The newly appointed Abbott cabinet has one woman out of 19 members, with only five women in the ministry (17%). The Queensland ministry, 19-strong, has only two women members. While these statistics are perhaps on par with other western democracies, the disproportionately low representation of women remains a concern.

The other important issue of note from the 1994 report is the distinct lack of participation of women from non-English speaking backgrounds, and from Aboriginal and Torres Strait Islander backgrounds. In the last federal election, Nova Peris became the first Aboriginal woman elected to the national parliament. This is to be celebrated. That her election has only just occurred, some 20 years after the ALRC Report, indicates that change is happening only glacially.

Justice

The participation of women in the institutions of the law has been identified as an important part of access to justice for women. Yet women are not participating at levels that would achieve this. In the wake of the almost complete lack of female representation in the federal cabinet, many claimed that appointment would only be made on merit: the implication being that those who were not appointed did not have the skills or qualifications to be there.

This is the big lie of our institutional framework that continues to block diversity in the make up of our institutions – diversity in gender, racial background, sexuality, ability and socio-economic background. The need to appoint a balance of ministers from different states and from each of the National and Liberal Parties means that in fact there is already a quota system in place for the ministry.

But it is of greater concern that a so-called meritocracy masks the personal characteristics of individuals who might otherwise be qualified. Decisions are made about suitable candidates ostensibly on objective criteria: experience, qualifications and skills. This discriminates in two respects.

First, each of us carries a prejudice for a particular type of person. Where men are dominant, as in the law and politics, men will be preferred. This extends to other attributes. Additionally, where this preference has been given all the way through the 'career pipeline' those who have *already* been preferred will seem to meet the 'objective' criteria. They can therefore be safely selected ahead of those who have not.

The new federal speaker Bronwyn Bishop and our first woman foreign minister, Julie Bishop, have both said that they have worked hard to achieve their positions in politics. This is undoubtedly true. In fact, they are likely to have worked doubly hard to overcome the natural prejudice against them. Should this be an acceptable way to include women in our institutions?

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