

Curl

Property law | women and law | contemporary legal issues

Saturday, 29 March 2014

Queensland to reintroduce gendered statutory language

On 19 March, the Queensland Attorney-General, Jarrod Bleijie, introduced the [Crime and Misconduct and Other Legislation Amendment Bill 2014](#) to Parliament. The Bill is designed to respond to two inquiries into the working of Queensland's Crime and Misconduct Commission. The Bill has been roundly criticised - not least by Tony Fitzgerald QC, who has described it as 'a gross abuse of power'.

In this post however, I will examine the legitimacy of a lower profile change proposed by the Bill: the renaming of the head of the CMC from 'chairperson' to 'chairman'. See eg clause 35:

35 Amendment of s 224 (Qualifications for appointment as the chairperson)

(1) Section 224, heading, 'as the chairperson'—
omit, insert—

chairman and deputy chairman

(2) Section 224, 'chairperson if'—
omit, insert—
chairman or deputy chairman if

It would, I imagine, be argued that there is no legal effect to the change. Section 32B of the [Acts Interpretation Act 1954](#) (Qld) provides:

In an Act, words indicating a gender include each other gender.

This would mean that legally, there would be no barrier to the appointment of a woman to the job of 'chairman' of the CMC because chair 'man' includes a woman. There are however four reasons why this is not only a retrograde step, but an indefensible one.

Sexist language

The word 'chairman' is a return to sexist language. It is sexist because in signifying a man, women are by implication excluded.

Dale Spender in [Man Made Language](#) argues that a 'patriarchal society is based on the belief that the male is the superior sex and many of the social institutions... [are] then organised to reflect this belief'. She examines the connection between language and reality, and 'challenges the view of this language, these ideas, as impartial and objective,' observing that the rules of grammar are designed to 'promote masculine ideals.'

Language has traditionally been used as the principal way of embedding gender in the law. As a consequence of the realisation of the harm this causes, it has been widely accepted for decades now in Plain English legal drafting principles and legislative and government drafting standards that authors avoid gendered pronouns. The old drafting technique (used in s32B of the [Acts Interpretation Act](#) - see above) is now a relic.

Gendered language strategies are widely recognised as creating, representing, promoting and perpetuating the law's masculine culture. This culture is reinforced by use of chair 'man' and masculine pronouns. For example, 'his' is used in the Explanatory Memorandum to the Bill page 2, policy objective 7:

strengthen the transparency and accountability of the commission by expanding the role of the Parliamentary Crime and Corruption Commissioner (parliamentary commissioner) in his oversight of the commission... [emphasis

About Me



Kate Galloway

I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education

[View my complete profile](#)

Subscribe To Curl

Posts

Comments

Follow me on Twitter

Follow [@katgallow](#)

Follow by Email

Email address...

Submit

Labels

digital
environment feminism gender
human body human
rights
land law legal
education legal profession
liberalism marriage
property property law
Queensland
same-sex marriage sexism
sustainability
women

My Blog List

[A Barrister's Blog \(by Paul Cutler\)](#)

[Amicae Curiae](#)

[Castan Centre for Human Rights Law's Blog](#)

[CDU Law and Business Online](#)

[cearta.ie](#)

[Charon QC](#)

[Law Geek Down Under](#)

[Marshall Chambers - Blog](#)

added]

This implies the parliamentary commissioner will be a man, or that the role requires a man.

Purpose of the amendments

In the [Explanatory Memorandum](#), the policy objectives of the Bill are spelled out:

...the recommendations will lead to an improvement in:

- o public confidence in the CMC;
- o timeliness of the investigation of complaints;
- o operational and corporate governance structures within the CMC;
- o the current culture within the CMC;
- o internal processes and practices in the CMC; and
- o management of personal conduct and work performance of Queensland public service employees

Overall, this Bill is to deal with upholding the integrity of the CMC. Nowhere is there any policy objective or any other mention of a need to change the title of the position of chair of the CMC. Without any reason, we are left with the impression that it is a man - a chairman - who is able to take charge and to implement good governance and timely investigation. This aligns with the traditional association of the masculine with that which is rational, strong, powerful and objective, rather than (the feminine) irrational, weak, sensitive and subjective.

It is recognised that on occasion a change in culture is facilitated by a change in nomenclature. If this were the case with the Bill this reason should have been stated in the Explanatory Memorandum. If that were its true purpose, it is also suggested that a total change in name (eg from Chairperson to Chief Officer or the like) would be more likely to achieve that purpose.

The change to masculine language meets no stated purpose but implies a masculine role for the chair.

Consistency

Contemporary drafting of legal documents, [government publications](#) and legislation adheres to principles of non-discrimination. That this Bill deviates from this principle, results in an inconsistency with this broad approach. This opens the way for questions about the rationale for the change. All language must be given a meaning, and this language stands out.

While unlikely to result in substantive denial of women's capacity for appointment to the role, inconsistency in language is poor practice. This is reflected in the Parliamentary Counsel's [quality assurance check for legislative drafting](#) to ensure 'consistency of language within the Act and with other Queensland legislation.'

Leadership and culture

Women remain under-represented in parliament (30% nationally, in 2012), in the ministry (two out of 19 in Queensland), on the bench (33.53% nationally; only one out of 17 appointments to the bench by the Newman government has been a woman) and in executive positions. It is vital to achieving justice for all that [institutions of the law are opened up to women](#). This includes leadership of the CMC. The use of chair 'man' is implicitly exclusive of women and offers an implied barrier.

These figures are however a reflection of the position of women in society more generally - where women suffer higher rates of poverty than men, lower pay and extraordinary rates of violence, usually at the hands of their partner or ex-partner. It is imperative to change the culture around the subordination of women that results in these outcomes. That includes showing leadership in the use of language as one of the tools of exclusion and subordination of women. The changes in this Bill set a precedent for further erosion of drafting principles that would serve to entrench women's disadvantage not just in the nomenclature of governance structures, but in ways affecting many women's lives directly.

Conclusion

There is no justification for the change in language in the policy objectives of the Bill or in drafting principles. There is certainly no harm in retaining the existing 'chairperson'. The proposed change reinforces masculine norms that form an implicit barrier to women in achieving leadership roles within the law, and a precedent for wider use of masculine language as a means of excluding and potentially discriminating against women through the law.

[PleagleTrainer Blog](#)

[Private Law Tutor](#)

[PropertyProf Blog](#)

[RAW/ROAR](#)

[simonmckay](#)

[Skepticlawyer](#)

[Survive Law](#)

[The Australian Professional Liability Blog](#)

[The Ed Techie](#)

[THE TRIAL WARRIOR BLOG](#)

[The Volokh Conspiracy](#)

[The Watermelon Blog](#)

Blog Archive

▼ 2014 (10)

▶ July (3)

▶ June (3)

▶ May (1)

▼ March (2)

[Queensland to reintroduce gendered statutory langu...](#)

[Women's Property](#)

▶ February (1)

▶ 2013 (18)

▶ 2012 (26)

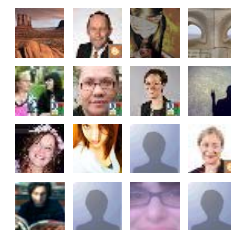
▶ 2011 (5)

Followers

Join this site
with Google Friend Connect




Members (25) [More »](#)



Already a member? [Sign in](#)

Posted by Kate Galloway at 00:27

 +6 Recommend this on Google

Labels: Campbell Newman, CMC, discrimination, feminism, Queensland, sexism, statutory interpretation, tough on crime
