

# Chief Justice Chris Kourakis says progress to correct gender imbalance ‘painstakingly slow’

TESSA AKERMAN and JORDANNA SCHRIEVER

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Chief Justice Chris Kourakis says affirmative action to address the gender imbalance in the legal profession *Source: News Limited*

**WOMEN are chronically under-represented in the legal profession and judiciary and there is a “strong case” for affirmative action to address the gender imbalance, Chief Justice Chris Kourakis says.**

The state’s most senior judge believes progress to overcome such inequities has been “painstakingly slow” and that balance will not occur naturally over time.

“That there is a chronic under-representation of women in senior positions in the legal profession and in the judiciary, when for decades now more than 50 per cent of law graduates have been women is a matter of serious concern,” he said.

“The slow progress over the last three decades means that there is now a strong case for affirmative action.”

His comments are in response to a letter written by Adelaide barrister Claire O'Connor that decries the under-representation of women in legal circles.

"The under-representation should not be seen only from the perspective of its unfairness to women, which it plainly is, but also as a great loss of skill knowledge and experience to the community," he said.

Ms O'Connor's opinion piece for the Law Society Bulletin on gender bias was in the form of a letter to a female Year 12 student who had been accepted into law at university, warning of the inequality she would face.

"While women lawyers outnumber males (the current figures are 1884 female and 1813) they are not equally represented in the senior ranks of the profession and are likely to be receiving lower remuneration," she wrote.

In her letter, Ms O'Connor also wrote that in Australia, men started out in legal careers earning 10 per cent more on average, a pay gap that remained throughout careers, and that men were far more likely to hold senior roles as judges, QCs or SCs, or become partners in private law firms.

She also pointed out that while 28 per cent of barristers in SA were women, they represented just 6 per cent of appearances in the state's courts, while just three of the state's 13 Supreme Court judges were female.

"The legal profession might adopt promotion and briefing practices which require the appointment of women to the position to be given active consideration. Government legal agencies could lead the way on this," she wrote.

Chief Justice Kourakis said the practice direction which governed the appointment of Senior Counsel required that the Chief Justice consult the Australian Women Lawyers Association.

"I give close consideration to the views of its representative not only as to women applicants but also as to the standard and methods of work of all applicants," he said.

"Only when women are better represented in senior positions, especially at the bar, can the gender imbalance in the judiciary be fully addressed."

Ms O'Connor said that since she published her article, she had been contacted by about 50 female lawyers and one man whose daughter is studying law.

She said some women chose to leave the profession in part because of the "misogynistic nature of law".

"It's not just the way in which we have males in positions of power and authority, it's the way in which lawyers behave towards each other and the courts behave sometimes towards women," she said.

University of Adelaide Dean of Law Dr Melissa de Zwart said the gender imbalance among the profession must be actively addressed, while SA Law Society president Morry Bailes said the society would be surveying its members later this year to get a better understanding of the issue in SA.

Dr de Zwart said a belief existed that women needed to be “more exceptional” than their male counterparts to be considered for a higher role.

She said more must actively be done to improve the imbalance, because “generational change wasn’t enough”.

“We can’t keep ignoring it, we must be alert to it being an issue because until we are equal it remains an issue.”

A new Australian Law Council survey of lawyers found nearly one in two female lawyers felt they had faced discrimination on the basis of their gender.

Mr Bailes said much of the existing data about inequality within the profession came from interstate, and South Australia — which made up less than five per cent of all lawyers nationwide — needed its own data to address any inequality at a local level.

“I do wonder whether the Y-generation that is coming through now, for whom gender is seemingly irrelevant, whether we would have this conversation in 10 or 15 years time,” he said.

He encouraged young females considering law not to be put off by suggestions of inequality.

Attorney-General John Rau said he would be happy to speak to the Chief Justice about what he has in mind at their next meeting.

Equal Opportunity Commissioner Anne Gale encouraged all businesses to analyse their payroll data to establish what kind of wage gap existed between male and female staff.

“Men still command the most senior positions and therefore attract the most significant salaries.

“The more women start to get those jobs, that will start to change the dynamic.

“If merit was working, women would be in those jobs too. Twenty years we’ve been talking about this pay gap and not moving on it.”



It is clear that the passage of time alone will not redress the imbalance. I would make the following comments about the nature of the problem.

First, the under-representation should not be seen only from the perspective of its unfairness to women, which it plainly is, but also as a great loss of skill knowledge and experience to the community. The advantage of a judiciary which closely reflects the community which it serves is not in having judges from the same societal group as litigants presiding over individual cases. Judges must decide cases dispassionately according to law and actions will usually involve parties from different sections of the community. The advantage is in having a court which, as a whole, is in touch with and has an understanding of the entire community.

Secondly, the under-representation of women in leadership roles is not peculiar to South Australia nor the legal profession. That suggests that fundamental societal and personal shifts are necessary if the balance is to be redressed.

Thirdly, the under-representation of women is a particular, and more easily recognisable, manifestation of more general barriers to advancement which are innate in many occupational and career structures. By way of example, I mention the under-representation of men and women who were raised and educated in socially and economically disadvantaged rural and urban regions in senior positions in the professions and business.

What is to be done? The Law Council of Australia recently published a report which investigated the reasons for the high attrition rate of women from the legal profession. The study highlighted reasons including:

- inflexible working hours
- inadequate career development and mentoring opportunities
- conscious and unconscious bias
- discrimination and harassment
- male dominated culture
- better opportunities in other work
- the demanding culture and environment of large law firms.

I considered the report important enough to send a judge of this Court to its launch in Canberra. Unfortunately, she was the only Supreme Court Judge from across Australia at the launch.

The Law Council now intends to translate those findings into policies to redress the imbalance. The report is an important early step but work needs to be accelerated.

The slow progress over the last three decades means that there is now a strong case for affirmative action. The environmental barriers mentioned in the Law Council's report will need to be addressed. The legal profession might adopt promotion and briefing practices which require the appointment of women to the position to be given active consideration. Government legal agencies could lead the way on this.

By way of example, the practice direction which governs the appointment of Senior Counsel requires that the Chief Justice consult with the Australian Women Lawyers Association. I give close consideration to the views of its representative not only as to women applicants but also as to the standard and methods of work of all applicants. Only when women are better represented in senior positions, especially at the bar, can the gender imbalance in the judiciary be fully addressed.