

Gender Bias in the Law (Ethics)

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2014 Report



20th Anniversary Review
of the
1994 Chief Justice's Gender Bias
Taskforce Report
(*'2014 Report'*)

September 2014

Available on WLWA's website at: <http://www.wlwa.asn.au/projects/2014-gender-bias-review-report.html>

2014 Report Chapters

- ▶ Chapter 1: Women's Access to Justice & Environment of the Court
- ▶ Chapter 2: Career Paths for Women in the Legal Profession
- ▶ Chapter 3: Appointment to the Judiciary
- ▶ Chapter 4: Aboriginal Women and Girls and the Law
- ▶ Chapter 5: Victims of Crime
- ▶ Chapter 6: Restraining Orders
- ▶ Chapter 7: Education; Laws which Discriminate Against Women; Women's Role as Law Makers
- ▶ Chapter 8: Women and Criminal Laws
- ▶ Chapter 9: Women and Punishment

Overview: *Gender Bias*

- ▶ Broad view of 'gender bias'
- ▶ Central premise of equality before the law

Equality before the law

“...both access to, and the delivery of, justice requires understanding of and sensitivity to the special requirements and disabilities of particular sections of the community.”

Judicial Commission of New South Wales, *Equality before the Law Bench Book* (2006) iii, at: www.judcom.nsw.gov.au/publications/benchbks/equality

Overview: *Terms of Reference*

The broad Terms of Reference for the 2014 Review Project were:

- ▶ To review the extent to which the recommendations made in the 1994 Report of the Chief Justice's Taskforce on Gender Bias (the 1994 Report) have been implemented.
- ▶ To the extent that any recommendations in the 1994 Report have not been implemented, to investigate and make recommendations in relation to whether, and if so how, those recommendations may now be implemented.
- ▶ To investigate the extent to which gender bias continues to exist in the law and the administration of justice in Western Australia, and to make recommendations for its elimination.
- ▶ To consult with such government agencies, organisations, groups or persons as the Steering Committee thinks fit in relation to these matters.

Summary of Findings

- ▶ Considerable gender bias and inequality still exists.
- ▶ This is the case across all 9 areas examined.
- ▶ Gender bias issues are a large impediment to society, particularly because they serve to:
 - ▶ prevent women from participating fully in the community and accessing the law and justice system
 - ▶ present a fundamental impediment to equality before the law.
- ▶ For these reasons gender bias must be addressed.

2014 Recommendations

- ▶ 197 Recommendations covering all 9 areas, which are:
 - ▶ Far reaching
 - ▶ Practical
 - ▶ Achievable
 - ▶ Measurable
- ▶ Common thread: The time to act is NOW.
- ▶ WLWA's work will now be focussed on seeing those recommendations implemented.

CHAPTER 1

Women's Access to Justice & Environment of the Court

- ▶ Examined the extent to which the WA legal system works in a manner that disadvantages women in terms of:
 - ▶ access to justice (including with respect to the available funding, resources, legal advice and representation); and
 - ▶ the environment of the courts (including with respect to the court administration, court facilities, court culture and the courtroom itself).

CHAPTER 1

- ▶ 46 Recommendations
- ▶ Covering issues identified in 1994 but still requiring action or further action:
 - ▶ Specialist women's legal and support services
 - ▶ Aboriginal and NESB Women
 - ▶ Interpreters
 - ▶ RRR Women
 - ▶ Vulnerable witnesses – accommodation of domestic violence victims
 - ▶ Toilets
 - ▶ Refreshments
 - ▶ Child minding
 - ▶ Court personnel – diversity and education
 - ▶ Judicial Education
 - ▶ Community legal education

CHAPTER 1

- ▶ Further issues identified in the 2014 Review, covering:
 - ▶ Accessible information – specific to the needs of court user groups
 - ▶ Computers / Internet Access / Printers
 - ▶ Court websites
 - ▶ Court fees
 - ▶ Court facilities – including remote rooms, interview rooms, mediation spaces and holding cells
 - ▶ Security issues
 - ▶ Mandatory jury duty
 - ▶ Court listings – accommodating women with children
 - ▶ Cultural awareness training

CHAPTER 2

Career Paths for Women in the Legal Profession

- ▶ Examined progress in the legal profession since 1994, along with current issues that did not feature in the 1994 Report.
- ▶ Draws on extensive consultations and literature review of recent research into the issues facing women lawyers.
- ▶ 42 Recommendations for positive change.

CHAPTER 2

- ▶ Recommendations cover a broad range of areas including:
 - ▶ Academia / law schools (university promotion and policies)
 - ▶ Graduates / articulated clerks (recruitment processes, transition, health issues)
 - ▶ Practice issues facing women (eg flexible work practices, areas of CPD need)
 - ▶ Maternity leave (eg promotion, reintegration, negative perceptions)
 - ▶ Large commercial law firms
 - ▶ Sexual Harassment
 - ▶ Women at the Bar
 - ▶ Issues specific to women's progression at the DPP and at the SSO
 - ▶ Conditions of work including salaries and drawings
 - ▶ Availability of career support
 - ▶ The changed culture of the profession
 - ▶ Women leaders in the law (including discussion of gender targets and goals).

CHAPTER 1

Summary

- ▶ Women face considerable INEQUALITY in our own profession
- ▶ Currently there is a tough reality to face: Succeeding in the law is more difficult for women than men, and women face challenges that men simply don't face.
- ▶ This chapter has seen the LEAST change over the past 2 decades.
- ▶ Much still needs to be done.

CHAPTER 2

Survey of the Legal Profession

- ▶ Completed in 2013, results released March 2014.
- ▶ Covered issues affecting women including:
 - ▶ disincentives to staying in the profession
 - ▶ barriers to advancement
 - ▶ attitudes towards different workplaces and types of practice
 - ▶ aspirations for judicial appointment
 - ▶ factors influencing movement within different legal roles or out of the law altogether.
- ▶ First research of this kind in WA since 1999.

CHAPTER 2

- ▶ Survey Report and further information is available at:
<http://www.wlwa.asn.au/projects/survey-of-the-legal-profession.html>

Survey Results

- ▶ Women lawyers are particularly concerned about the opportunities to advance in their careers.
- ▶ Key factors for women leaving the law:
 - ▶ High stress
 - ▶ Lack of flexibility
 - ▶ lack of a supportive workplace; and
 - ▶ long hours or poor pay.

CHAPTER 2

- ▶ Key factors impacting on the success of women lawyers are:
 - ▶ The impact and timing of maternity leave;
 - ▶ The impact of elder care responsibilities (largely met by women);
 - ▶ Support during reintegration into the profession
 - ▶ Flexible work practices (particularly availability, impact on career, unconscious bias)
 - ▶ Promotional opportunities for women
 - ▶ Lack of formal mentoring / maternity leave at the bar
 - ▶ Unconscious bias against briefing women
 - ▶ Court hours not child or elder care friendly.

CHAPTER 3

Appointment to the Judiciary

- ▶ Examined four issues first identified in 1994 – namely:
 - ▶ the process for the appointment of the judiciary
 - ▶ strategies to facilitate an expeditious increase in the number of women appointed to the judiciary
 - ▶ the availability of part-time judicial service
 - ▶ increasing the awareness of gender bias amongst members of the judiciary.
- ▶ Links to Chapter 1 (judicial education regarding gender bias issues – rec 1.30) and Chapter 2 (changes in the legal profession to facilitate the appointment of more women judges).

CHAPTER 3

- ▶ 6 Recommendations

- ▶ Two main themes:

(1) Manner in which suitable persons should be selected for appointment to the judiciary

(2) Part-time judicial service – defined as judicial service which:

- ▶ Is identical to full-time judicial service in all respects except for hours of work and, consequently, remuneration;
- ▶ Is for a term which extends to a statutory age of retirement;
- ▶ Excludes the possibility of other paid work (but not intended to exclude charitable work and other activities which do not create a likelihood of conflicts of interest).

CHAPTER 3

- ▶ Selection for appointment:
 - ▶ Recent developments in WA and at Commonwealth level
 - ▶ Want to see the current process formalised and strengthened, to apply in the Supreme Court, District Court and Family Court of WA
 - ▶ Invitation for expressions of interest and nominations
 - ▶ Vacancies advertised widely
 - ▶ Continuation of consultations with key stakeholders (incl WLWA) to assist to identify suitably qualified women candidates.

CHAPTER 3

- ▶ Part-time Judicial Service:
 - ▶ **Major benefits:** facilitates meritorious appointments, greater diversity, flexibility, cost saving.
 - ▶ Obvious candidates are women, **but** largest potential part-timers are judicial officers who have served over 10 years – Currently faced with continuing full-time or retiring (plenty of men!)
 - ▶ Within proper limits, part-time judicial service is appropriate:
 - ▶ No threats to judicial independence
 - ▶ No insurmountable practical difficulties
 - ▶ Already utilised successfully in Children's Court, Family Court of WA, State Administrative Tribunal.

CHAPTER 4

Aboriginal Women and Girls and the Law

- ▶ Committed to ensuring the voices of Aboriginal women were heard in 2014 as they were in 1994.
- ▶ Issues examined include:
 - ▶ Aboriginal cross-cultural awareness courses
 - ▶ Aboriginal Justices of the Peace; Court Staff
 - ▶ University Training for Aboriginal and Non-Aboriginal Lawyers
 - ▶ Aboriginal Community Courts
 - ▶ The provision of legal services for Aboriginal women
 - ▶ Aboriginal languages and interpreters
 - ▶ Punishing crimes of violence; Aboriginal Community Based Panels
 - ▶ Safe houses; Safety at Court
 - ▶ Police and police facilities
 - ▶ Native Title (a new area in the 2014 Report)

CHAPTER 4

- ▶ 30 Recommendations
- ▶ Cover key issues such as:
 - ▶ Cultural awareness training for the judiciary including JPs, for law students, for prosecutors, public servants and police officers
 - ▶ The provision of legal services including representation as well as advice, counselling and referrals for Aboriginal women
 - ▶ The employment of Aboriginal women as lawyers, prosecutors, police officers, court officers and court counsellors
 - ▶ Concern for the safety of Aboriginal women and their children in the legal system.

Conclusion

- ▶ Gender equality is everyone's responsibility: Not a 'women's issue'
- ▶ Affirmative and immediate action required from government, the legal profession, and the wider community.
- ▶ Men have a vital role to play in addressing gender bias and implementing the Recommendations in the 2014 Report.
 - ▶ Continue to hold key decision-making roles
 - ▶ Male dominated profession: in the best position to instigate change.
- ▶ **Time for Change is NOW**
- ▶ 2014 Report provides the practical tools to achieve real change.

Resources



- ▶ **2014 Report:** *20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report* (September 2014)
<http://www.wlwa.asn.au/projects/2014-gender-bias-review-report.html>
- ▶ **20th Anniversary Review Project:** Background information and a copy of the *1994 Report of the Chief Justice's Taskforce on Gender Bias*, and the *1997 Progress Report* setting out the State Government's responses
<http://www.wlwa.asn.au/projects/20th-anniversary-review-project-gender-bias.html>
- ▶ **Survey Report:** *An Analysis of Work-related Issues and Conditions of Lawyers in Western Australia* (The Nexus Network)
<http://www.wlwa.asn.au/projects/survey-of-the-legal-profession.html>