



Griffith Journal
of Law & Human Dignity
**GENDER, CULTURE
& NARRATIVE**

GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY

Editor-in-Chief
Michelle Gunawan

Special Issue
Deputy Editor
Alexandria Neumann

Executive Editors
Isaac Avery
Josephine Vernon

Editors

Vanessa Antal
Myles Bayliss
Mark Batakin
Reyna de Bellerose
Renee Curtis
Elizabeth Englezos
Danyon Jacobs

Kim Johnson
Leanne Mahly
Juliette Murray
Yassamin Olson
Isabelle Quinn
Andrea Rimovetz

Consulting Executive Editor
Dr Allan Ardill

Gender, Culture, and Narrative
Special Issue
2017

Published in April 2017, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity* ISSN: 2203-3114

We acknowledge and thank Indie Grant-Male and Molly Jackson for creating our Special Issue cover art. We also extend our appreciation to Molly Jackson for her indispensable role in shaping the vision and content of the Special Issue in its early stages.

CONTENTS

MICHELLE GUNAWAN	<i>EDITORIAL</i>	1
DR KATHERINE FALLAH	<i>RE GEORGIO: AN INTIMATE ACCOUNT OF TRANSGENDER INTERACTIONS WITH LAW AND SOCIETY</i>	6
PIDGEON PAGONIS	<i>FIRST DO NO HARM: HOW INTERSEX KIDS ARE HURT BY THOSE WHO HAVE TAKEN THE HIPPOCRATIC OATH</i>	40
DR CARMEN LAWRENCE	<i>WOMEN, SEXISM, AND POLITICS: DOES PSYCHOLOGY HELP?</i>	52
RACHEL KUO	<i>SCRIPTING RACED AND GENDERED MYTHS OF (UN)BELONGING</i>	68
TUANH NGUYEN AND REYNAH TANG	<i>GENDER, CULTURE, AND THE LEGAL PROFESSION: A TRAFFIC JAM AT THE INTERSECTION</i>	91
DR LAUREN ROSEWARNE	<i>FROM MEMOIR TO MAKE BELIEVE: BEYONCÉ'S LEMONADE AND THE FABRICATION POSSIBILITY</i>	112
ELISE STEPHENSON, KAYE BROADBENT, AND GLENDA STRACHAN	<i>CLIMBING THE 'STAIRCASE': DO EEO POLICIES CONTRIBUTE TO WOMEN ACHIEVING SENIOR LEADERSHIP POSITIONS IN UNIVERSITIES IN AUSTRALIA AND HONG KONG?</i>	122
JUNTAO LYU	<i>THE STORY OF A 'LEFT-BEHIND' CHILD OF CHINA</i>	153
JUDITH HERRMANN	<i>EXPERIENCES, CHALLENGES, AND LESSONS LEARNED — INTERVIEWING RWANDAN SURVIVORS OF SEXUAL VIOLENCE</i>	165
HAZAL GACKA	<i>LEVELLING THE PLAYING FIELD: DISCRIMINATION AGAINST WOMEN IN SPORT</i>	189

GENDER, CULTURE, AND THE LEGAL PROFESSION: A TRAFFIC JAM AT THE INTERSECTION

TUANH NGUYEN AND REYNAH TANG*

The legal profession is an old and conservative one, which has had difficulty addressing diversity and inclusion, particularly in relation to gender. In this article, the issue of gender, culture, and the legal profession is tackled from two complementary perspectives: Tuanh Nguyen shares her journey as both an Asian Australian and a female in the law, while Reynah Tang reflects on the state of cultural diversity in the Australian legal profession and the reasons for the lack of such diversity. It is argued that the legal profession cannot wait for gender diversity to be solved, but rather that it is vital that cultural diversity be considered in parallel, and that concrete action be taken to address the barriers that exist. It should be acknowledged that this article examines cultural diversity from an Asian Australian perspective, but such issues are not restricted to people from Asian cultural backgrounds, as evidenced by the lack of diverse representation across racial/ethnic groups, and the formation of associations focused on promoting cultural diversity for Hellenic, Italian, Muslim, and French lawyers.

* Tuanh Nguyen is President, and Reynah Tang is Immediate Past President, of the Asian Australian Lawyers Association ('AALA'). The AALA was established in 2013 to promote cultural diversity in the legal profession, with a focus on Asia.

CONTENTS

I	AN OLD AND CONSERVATIVE PROFESSION	92
II	FROM LEAKY BOAT TO LAW FIRM: A PERSONAL NARRATIVE BY TUANH NGUYEN	94
	<i>A A Family's Journey</i>	94
	<i>B Growing Up in Australia</i>	96
	<i>C Life as an Asian Australian Lawyer</i>	98
III	LOCATING THE INTERSECTION AND INSTALLING A TRAFFIC LIGHT	100
	<i>A Action by Association</i>	100
	<i>B Gathering the Data</i>	101
	<i>C Establishing the Business Case</i>	102
	<i>D Barriers to Cultural Diversity</i>	104
	<i>E And Don't Forget About Intersectional Diversity</i>	106
	<i>F How We Can Promote Greater Diversity</i>	106
IV	OPENING UP THE INTERSECTION	107

I AN OLD AND CONSERVATIVE PROFESSION

The legal profession is among the oldest of the professions, and also probably the most conservative. It has a real problem with diversity and inclusion.

It was in 1905 — only a few years after Federation — that Flos Greig became the first woman to be admitted as a barrister in Australia at the Victorian Bar.¹ That was about a year or so after the admission of the first barrister of Chinese descent to practise in Australia, William Ah Ket.² However, over a century later, while women now represent about half the legal profession and more than 60 per cent of incoming law graduates, they still represent a minority of partners in

¹ Ruth Campbell and J Barton Hack, Greig, *Grata Flos Matilda (1880-1958)* (2006) Australian Dictionary of Biography Online <<http://adb.anu.edu.au/biography/greig-grata-flos-matilda-7049>>.

² John Lack, *Ah Ket, William (19876-1936)* (2006) Australian Dictionary of Biography Online <<http://adb.anu.edu.au/biography/ah-ket-william-4979>>.

law firms, barristers, and members of the judiciary.³ The number of Asian Australians in the senior echelons of the legal profession is even lower.

While barely a day goes by without some analysis of the gender disparities in the legal profession, there has barely been any discussion in Australia about cultural diversity nor the extent to which the two aspects can intersect, which for Asian Australian women can be visualised as an opaque — and perhaps impenetrable — glass coated bamboo ceiling.⁴

There is something of a traffic jam for diversity in the law, with cultural and other aspects of diversity being held up, until gender equality has been cleared. This is most evident in the National Model Gender Equitable Briefing Policy issued by the Law Council of Australia ('LCA') in 2016 that sets hard targets for the briefing of female barristers. While recognising 'the desire to develop equitable briefing policies that represent broader aspects of diversity, including with regards to race and other attributes', the policy merely goes on to provide that 'the targets will be reviewed in July 2018 and the Law Council will continue ongoing discussions with its constituent bodies to monitor the impact of the policy and consider whether [sic] its broader application beyond gender' is required.⁵ This is disappointing. As made clear in a 2016 report by the Australian Human Rights Commission ('AHRC'):

To wait until gender equality is achieved within the workplace would place the issue of cultural diversity on indefinite hold. In any case, the different dimensions of diversity frequently intersect. Efforts to improve the

³ Law Society of New South Wales, *2014 Profile of the Solicitors of New South Wales* (March 2015) The Law Society of New South Wales <<http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/942948.pdf>>; College of Law, *Encouraging gender diversity in the legal profession* (13 March 2014) College of Law <<https://www.collaw.edu.au/insights/encouraging-gender-diversity-legal-profession/>>.

⁴ Lara Bullock, *A long way to go on the road to diversity* (16 September 2016) Lawyers Weekly <<http://www.lawyersweekly.com.au/podcasts/19575-podcast-a-long-way-to-go-on-the-road-of-diversity>>; Samantha Woodhill, 'Firm announces ambassador ahead of equal pay day', *The Australasian Lawyer* (online), 7 September 2016 <[http://www.australasianlawyer.com.au/news/firm-announces-ambassador-ahead-of-equal-pay-day-222948.aspx?keyword=gender diversity](http://www.australasianlawyer.com.au/news/firm-announces-ambassador-ahead-of-equal-pay-day-222948.aspx?keyword=gender%20diversity)>.

⁵ Law Council of Australia, *National Model Gender Equitable Briefing Policy* (June 2016) Law Council of Australia <http://www.lawcouncil.asn.au/lawcouncil/images/National_Model_Gender_Equitable_Briefing_Policy_-_June_2016.pdf>.

advancement of culturally diverse talent may also contribute to improve gender representation in leadership (given that we can assume at least half of such talent will be female).⁶

In this paper, the issue of gender, culture, and the legal profession is tackled from both a qualitative (personal) and quantitative (data) perspective.

The central thesis of this paper is that it is vital for cultural diversity in the legal profession (including, but not limited to, Asian Australians) to be addressed, in parallel with steps being taken on gender and others aspects of diversity. As eminent jurist, the Hon Michael Kirby AC, CMG, said when launching the New South Wales branch of the Asian Australian Lawyers Association ('AALA'):

Law is not an ordinary profession ... Law is about the values that inform what we do, how we do it and outcomes ... therefore it's more important in law to reflect the diversity of values than it is in just about anywhere else because law is about power ... And if values affect the exercise of power, it is very, very important that the diversity of values and the experience of backgrounds should be reflected.⁷

II FROM LEAKY BOAT TO LAW FIRM: A PERSONAL NARRATIVE BY TUANH NGUYEN

A A Family's Journey

As my name suggests, my family's heritage originates from Vietnam. Both of my parents grew up in South Vietnam and whilst they grew up in loving and large families, they both experienced the Vietnam War for most of their lives in Vietnam. Both of my grandfathers and a number of my uncles were officers of the South Vietnamese Army and Navy. My grandmother also worked for the United States Army. My family was very much one which was allied with the South Vietnamese Government, its allies, and the military.

⁶ Australian Human Rights Commission, *Leading for Change – A blueprint for cultural diversity and inclusive leadership* (July 2016) Australian Human Rights Commission <https://www.humanrights.gov.au/sites/default/files/document/publication/2016_AHRC%20Leading%20for%20change.pdf>.

⁷ Asian Australian Lawyers Association, *The Asian Australian Lawyers Association launches in New South Wales* (10 November 2015) Asian Australian Lawyers Association <<http://aala.org.au/3625658>>.

In 1975, my family found themselves on the losing side of this long and bitter war. The immediate years after the end of the Vietnam War were difficult — my grandfathers were sent to “re-education camps”, my grandmother mysteriously died after an accident with some communist soldiers, and my aunts were forced to leave school to push street carts selling black-market trinkets to make a living. Their freedom was restricted, their possessions taken, food was rationed, and money was short (any money they did have before the war was of no value following the conversion to a new currency after the war).

After a few years of living hell, my parents decided they had had enough and made plans to leave the country. As many who did before, and many who did after, my parents and their brothers and sisters formulated plans to escape the country by boat.

In late 1982, my parents, along with several aunts and uncles, implemented this escape plan. Dressed as farmers, they discreetly travelled to Ba Ria, a seaside village in the south of Vietnam, where a boat was waiting for them. They walked for miles through forests and paddocks during the dark of night to get to the port of departure whilst avoiding waiting police and farmers (some of whom happened to be undercover police). Whilst my parents were lucky, a number of my aunts were not — they were caught by the police and sent to jail for their attempted escape.

Still under the cover of darkness, my parents made it to the port of departure and onto a tiny, overcrowded, rickety wooden boat. On this 12 metre long boat, my parents sailed for a week with over 100 cramped, sick, and scared people towards Indonesia, desperately risking their lives to seek freedom.

For their entire escape from Vietnam to reach Indonesia, where they were sent to a refugee camp on the island of Galang, my parents kept a secret from everyone, including their own families. My mum was four months pregnant with me. I was born in the refugee camp’s hospital. Given my parents were refugees and stateless — they were not Indonesians, not Vietnamese and at that stage, no other country had accepted to take them — that meant I was born without a

nationality. My birth certificate is an International Red Cross issued birth certificate with no nationality stated.

Approximately one month after my birth, my parents were accepted by Australia to resettle. However, as they were not permitted to leave the Galang refugee camp until I was old enough to travel by plane, for the first six months of my life, my parents and I lived in the cramped barracks of the refugee camp with hundreds of other refugees, awaiting processing and resettlement.

B Growing Up in Australia

Along with my parents and two uncles, I arrived in Melbourne, Australia in January 1984 at the age of six months. Our first place of residence in Australia was a hostel for newly arrived Vietnamese immigrants in Maribyrnong, in the western suburbs of Melbourne.

As Vietnamese migrant families started to settle into their new country, the families moved into their own homes. As with my own family, most families moved to areas within reasonably close vicinity to other Vietnamese immigrants — Footscray, Richmond, and Springvale. Perhaps part of that was because housing in those areas was cheap relative to other areas of Melbourne. However, more of it had to do with comfort and security. For my parents, there was a level of comfort in being around people who looked like them, who spoke the same language as they did, and had experienced (and are still experiencing) a similar journey to their own.

My family ultimately settled in the western suburbs of Melbourne and this is where I grew up. Growing up in the western suburbs was comfortable. Not because we were financially comfortable, but socially comfortable. The western suburbs of Melbourne were a melting pot of cultures. Almost everyone I grew up with, went to school with, or otherwise interacted with was from a working class migrant family. We all came from different places — Vietnam, Malta, Italy, Ireland, Poland, Serbia, Greece, the Philippines, and Lebanon (just to name a few).

But we all shared one common bond — we were all different. We distinguished ourselves by our cultural backgrounds, but we were all minorities (even the small handful of people who did not come from a recently migrated family). We lived in a vast sea of colourful and contrasting cultures, and there was no “majority” race or culture that could have been described as the status quo. In other words, we were different but our difference was what made us the same.

However, outside this bubble that was life in the western suburbs, I did not feel this same sense of comfort and security about my race and cultural background. As I moved into my formative years, the Asian immigration debate was ramping up. At that time, there was a lot of reporting and coverage on the issue of Asian immigration and the problems that it was causing to Australia, which was particularly encouraged by certain outspoken politicians and their sympathisers. I was old enough at that time to understand the bigotry and hatred that certain people within the Australian community had for people of my race and cultural background. This understanding was supported by real life stories from family, friends, and acquaintances who had been subjected to outright racism by members of the Australian public.

Whilst I was old enough to understand that the Australian public did not like me, or people who looked like me because of my race and cultural background, I could not comprehend why. And perhaps because of that lack of understanding on “why”, I developed a sense of intimidation, shame, and fear. I distinctly remember being embarrassed by the fact that I was Asian. During my teenage years, I actively chose not to go anywhere or be seen anywhere outside my Melbourne western suburbs bubble. Outside my Melbourne western suburbs bubble, I felt that I did not belong, nor was entitled to belong. I feared that should I step outside my bubble, I too would be the subject of the racist attacks that my family members, friends, and acquaintances had experienced.

It has taken years, if not decades, for me to overcome this fear. The biggest life event that provided me with the platform to overcome my embarrassment at being Asian, and my fear of discrimination, was going to university.

Over the course of my five years at university, I made many friends who came from all sorts of places, and had very diverse backgrounds. Most people I came across did not seem to be fussed by the fact that I was Asian. My experience at university allowed me to see that there were many people who did not hold the same bigoted and discriminatory views that I had seen through the media during my teenage years. This experience really helped to overcome my personal fears.

C Life as an Asian Australian Lawyer

I commenced my legal career undertaking Articles at an international law firm in 2006 and quickly settled into the corporate team. During my junior years, I worked hard and the fact that I was Asian or female did not inhibit my career progression. I was lucky enough to work with an amazing supervising partner and a wonderful team of senior lawyers, who supported me as I progressed.

However, as I moved into the more senior ranks, I began to see the unconscious biases seeping through. It did not necessarily come from the immediate team that I worked with, but rather from other partners and lawyers (within my own firm as well as other law firms), clients, and other people I professionally had contact with. The unconscious biases were not the overt sexism or the type of racism that I had feared in my younger years. Rather, the unconscious biases came through in subtle actions and words. I came across people who displayed this unconscious bias in the comments they made, such as statements like 'Wow, you have a really good Australian accent' or 'You look too young to be a senior associate.' Recently, I walked into a room for a completion with a junior associate. I was the short, female, Asian lawyer, while he was the very tall, blonde, Caucasian lawyer. The initial reaction we received from others on the transaction was that he was the senior lawyer and I was his "lackey" and it took some express clarification to the respective clients and other lawyers that, in fact, it was the other way around.

Until I moved into the more senior ranks of my profession, my biggest distinguishing factor was my race and cultural background. The notion that my career could be limited by the fact that I was female was completely novel to me. Growing up, the fact that I was female was never a real issue. Even though within

the Vietnamese family hierarchy, the males are given priority over the women, from an early age my family instilled in my mind that I could do anything in my career and that, professionally, men and women are and should be treated as equals.

However, the inequalities that women are subject to, and the lack of representation by women at senior levels, have become clearer as I continue to progress in my career. For example, in 2016, I advised a company on its initial public offering ('IPO') and listing on the Australian Securities Exchange. It was one of the largest IPOs in Australia by deal size that year. After we had completed the IPO, I was having lunch with the CEO and he observed that, of the approximately 25 client-facing professional advisers that he was involved with through the IPO process, I was one of two females.

After reflecting on this comment and why there is a lack of women (and particularly Asian women) in client-facing roles on major corporate transactions, I recalled numerous examples of conduct that have held them back. I have seen partners make decisions based on certain assumptions and unconscious preconceptions. For example:

- I have seen partners not select women for major transactions, expressly stating that the reason they were not selected was because those women worked part-time and therefore cannot fully commit to the job (without even giving those women the opportunity to confirm that assumption).
- I have had partners expressly tell me that I have to choose between being a corporate transactional lawyer or having a family, and it is not possible to have both at any one given time.
- I have heard partners expressly say that certain Asian women cannot have a "client-facing" role because they are too softly-spoken and lack presence, and therefore, would not be able to command a client's respect or attention.

These comments and observations made by senior lawyers in the legal profession are not isolated incidents. Unfortunately, these comments (in one shape or another) have been made to me and many other Asian women on a regular and repetitive basis. These types of statements have demoralised women and discouraged (and will continue to discourage) many talented and capable women, including those of an Asian heritage, from progressing through what is already a competitive and demanding profession. As a result, the vicious cycle continues, and women (and particularly culturally diverse women, including Asian women) continue to be under-represented in the top echelons of the legal profession.

III LOCATING THE INTERSECTION AND INSTALLING A TRAFFIC LIGHT

A Action by Association

The AALA was established in 2013, at a time when Reynah Tang was President of the Law Institute of Victoria ('LIV'), being the first President from an Asian cultural background in what was then its 154-year history.

The LIV was and continues to be a leader in promoting diversity. For example, it was the among the first law societies in Australia to adopt an equal opportunity barrister briefing policy and a reconciliation action plan. However, it was apparent at the time that the LIV was not doing much in the cultural diversity space.

Anecdotal concerns about the lack of cultural diversity in the legal profession were starting to be raised. Why are there so few Asian partners in our large law firms? Where are all the Asian barristers? See if you can spot the Asian judge!

Remarkably, there were two other law society Presidents of Asian background in 2013 — Noor Blumer of the Australian Capital Territory Law Society and Peggy Cheong of the Northern Territory Law Society. However, when the three of them sought to raise the lack of cultural diversity in the legal profession with other law societies, they were met with a variety of reactions ranging from:

- Denial — 'I don't see race'; to

- Patronising — ‘you just need to be patient’; to
- Fairly hostile — ‘but why do you need information on the cultural background of lawyers, and what are you going to do with it?’

It was against that backdrop that the AALA was established to improve the level of cultural diversity in the legal profession, particularly at the senior echelons.

B Gathering the Data

Unlike countries such as the United Kingdom and New Zealand, very little information is collected regarding the cultural origins of those that make up our legal profession. Interestingly, one statistic we do have is that some 10.75 per cent of solicitors in New South Wales were born in Asia.⁸ One would expect that the percentage of solicitors with Asian cultural origins would be even higher.

It was in order to address this gap in data that the AALA formed a group of committee members and volunteers to review the publicly available information regarding law firm partners, barristers, and judicial officers to gather data on the level of Asian Australian participation. It was limited to those groups for which a reasonable level of public information is available.

The research showed that while Asian Australians account for some 9.6 per cent of the Australian population, Asian Australians represent only:

- 3.1 per cent of partners in law firms with more than 10 partners;
- 1.6 per cent of barristers; and
- 0.8 per cent of the judiciary.⁹

It is apparent from this summary that the level of Asian Australian representation in the senior echelons of the legal profession is low, and

⁸ Law Society of New South Wales, above n 3; This records that 28 per cent of NSW solicitors were born overseas, of which 38.4 per cent were born in Asia.

⁹ Asian Australian Lawyers Association, *The Australian Legal Profession: A snapshot of Asian Australian diversity in 2015* (April 2015) Asian Australian Lawyers Association <<http://aala.org.au/Resources/Documents/aala-cultural-diversity-analysis-2015-infographic-final.pdf>>.

diminishes as one moves up the ranks. Moreover, the representation of Asian Australians at both the Bar and within the judiciary compares unfavourably with the corporate sector, with research undertaken by the Diversity Council of Australia ('DCA') on the corporate sector showing that 1.9 per cent of ASX 200 senior executives have Asian cultural origins.¹⁰

As the then President of the Victorian Bar quite rightly pointed out at the time the research was launched, at least in Victoria, access to the Bar is open to anyone who passes the bar exam so it is, of course, quite possible that the low representation arises because Asian Australian lawyers tend to prefer life as a solicitor, to the cut and thrust of the Bar. But, it seems equally possible that it may be the product of the lack of support for those Asian Australians that seek to be advocates or appropriate role models to inspire them. At the very least, it raises a question of whether more could be done to encourage Asian Australians to sign the Bar roll, and then to support them once they arrive. For example, if senior barristers took positive steps to put forward young Asian Australian barristers when asked for recommendations as to a junior barrister, this would help to develop the profile of Asian Australian barristers and overcome some of the possible biases of instructing solicitors.

C Establishing the Business Case

Diversity is an increasing business imperative, including in the law. In a report published in 2015 by McKinsey & Company, the authors say 'diversity matters because we increasingly live in a global world that has become deeply interconnected. It should come as no surprise that more diverse companies and institutions are achieving better performance.'¹¹

¹⁰ Diversity Council of Australia, *Cracking the Cultural Ceiling: Future Proofing your Business in the Asian Century* (2014) Diversity Council of Australia <<https://www.dca.org.au/cracking-cultural-ceiling/index.html>>.

¹¹ Vivian Hunt, Dennis Layton and Sara Prince, *Why diversity matters* (2 February 2015) McKinsey & Company <<http://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>>.

The McKinsey analysis, which looked at hundreds of organisations and thousands of executives in the United Kingdom, Canada, Latin America, and the United States, found that:

- Companies in the top quartile of gender diversity were 15 percent more likely to have financial returns that were above their national industry median; and
- More astoundingly, companies in the top quartile of racial/ethnic diversity were 35 per cent more likely to have financial returns above their national industry median.¹²

Of course, as the McKinsey authors note, ‘the relationship between diversity and performance highlighted in the research is a correlation, not a causal link.’¹³ However, they point to other studies that suggest that the likely reason that diverse companies have better performance is that they ‘are better able to win top talent and improve their customer orientation, employee satisfaction, and decision making, leading to a virtuous cycle of increasing returns.’¹⁴

The report also contained an important observation. The authors said

[t]he approach of many companies has been to adopt a single diversity programme to cover all action groups: racial/ethnic, gender, and sexual orientation. Yet the data suggests that such an approach is insufficient, resulting in a focus on a particular category rather than the issue as a whole.¹⁵

And, of course, in this Asian Century, many law firms are looking excitedly to Asia for growth. However, if they are to succeed in tapping into Asian markets, there is a real need for firms to focus on Asian cultural diversity so that they better reflect — and empathise with — the clients that they serve.

The McKinsey report touches on this issue in commenting on:

¹² Ibid

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid 8.

a senior executive at a global company in Asia [who] stated an obvious if difficult truth when he said, 'in our top 100 executive meetings we spend more than half of our time speaking about Asia. But if I look around the room I hardly see anybody with an Asian background.'¹⁶

Turning to the judiciary, judges are, of course, duty bound to judge without fear or favour. However, the absence of diversity can lead to conscious and unconscious biases that play out in the wider justice system.

In a 2014 blog on cultural diversity in the Australian judiciary, Mr Ray Steinwall — General Counsel of Novartis Pharmaceuticals in Australia — referred to comments of former High Court Justice Michael McHugh who has said that 'when a court is socially and culturally homogenous, it is less likely to command public confidence in the impartiality of the institution.'¹⁷ Mr Steinwall went on to add that 'a diverse judiciary allows legal argument to be received by those who bring differing perspectives and experience to bear on an issue.'¹⁸

Ultimately, Mr Steinwall concludes: '[i]f Australia is to play a leadership role in the Asia/Pacific that is the fastest growing in the world, there is an urgent need to improve diversity on the bench to reflect the contemporary society that it serves.'¹⁹

D Barriers to Cultural Diversity

One of the most significant barriers to improving cultural diversity is the shaping of unconscious bias. In a 2013 article for *The Age*, Waleed Aly referred to an Australian National University study that demonstrated this bias. According to Aly, it:

found you're significantly less likely to get a job interview if you have a non-European name. The researchers sent fake CVs in response to job

¹⁶ *Ibid* 11.

¹⁷ Ray Steinwall, *Addressing cultural diversity in the Australian judiciary* (30 April 2014) Diversity Council of Australia <<https://www.dca.org.au/blogs/view/14/Addressing+cultural+diversity+in+the+Australian+judiciary>>.

¹⁸ *Ibid*.

¹⁹ *Ibid*.

advertisements, changing only the name of the applicant. It turns out that if your surname is Chinese, you have to apply for 68 per cent more jobs to get the same number of interviews as a [sic] Anglo-Australian. If you're Middle Eastern, it's 64 per cent. If you're Indigenous, 35 per cent.²⁰

None of us are immune to the risk of unconscious bias because it is a result of the way our brains must operate in order to make sense of a complex world. The good news is that unconscious bias is a well-known phenomenon and there is training available to help people identify and overcome their natural biases.

Looking at the barriers to cultural diversity for Asian Australians more particularly, research conducted by the DCA in the business sector suggest potential barriers to Asian Australian progression include:

- Cultural bias and stereotyping, which often sees Asians viewed as being good workers, but not necessarily leaders;
- Westernised leadership models, which overvalue self-promotion and assertive, direct communication, and undervalue reserve and deference and respect for seniority;
- The lack of relationship capital, which results in Asian Australians failing to access those mentors and sponsors best placed to assist their careers; and
- The case for culture not being understood, with management failing to value their culturally diverse workforce or appreciate the strategic role that they could play in helping organisations to prosper in the Asian century.²¹

While the survey conducted by the DCA was across the business sector, similar issues can be anticipated in the legal profession, which may well be exacerbated given the conservative nature of the profession and its tendency to lag behind

²⁰ Waleed Aly, 'The curse of Australia's silent pervasive racism', *The Age* (online), 5 April 2013 <<http://www.theage.com.au/comment/curse-of-australias-silent-pervasive-racism-20130404-2h9i1.html#ixzz3hegg9lvv>>.

²¹ Diversity Council of Australia, above n 10.

developments in other sectors, as evidenced by the continuing issues faced by women in the profession.

It is also important to observe that such issues are not restricted to people from Asian cultural backgrounds. The existence of similar organisations for other ethnic groups — such as the Hellenic Australian Lawyers Association, Australian Italian Lawyers Association, the Muslim Legal Network and the French Australian Lawyers Society — suggest a shared need and concern.

E And Don't Forget About Intersectional Diversity

The above discussion focuses largely on cultural diversity because that is the focus of the AALA. However, at an organisational level, it is clear that addressing diversity and inclusion in a one-dimensional manner will be ineffective. As noted by the Deloitte University Leadership Centre for Inclusion, 'corporations have stalled in creating more diverse and inclusive work environments because of their inherently one-dimensional [diversity and inclusion] efforts.'²²

As Tuanh's personal narrative shows, being both Asian Australian and female presents its own unique challenges.

Deloitte suggests:

the next [diversity and inclusion] breakthroughs will organically occur and shatter lingering barriers to fully inclusive organizations only when corporations revise [diversity and inclusion] frameworks to engage employees across difference and in the multiple ways they define themselves in a manner that promotes common ground.²³

This is the reason that the AALA has been working closely with other associations, such as the Women Lawyers Association of New South Wales and Victorian Women Lawyers.

F How We Can Promote Greater Diversity

²² W Sean Kelly and Christie Smith, 'What if the road to inclusion were really an intersection?', *Deloitte University Press* (online), 11 December 2014
<<http://dupress.com/articles/multidimensional-diversity/>>.

²³ *Ibid.*

The 2016 AHRC report suggests a way forward in terms of generating change on cultural diversity, involving leadership, systems, and culture.²⁴

The importance of leadership in driving organisational change is self-evident. If those in leadership positions set an example, others will follow.

Systems involve both the collection of data and the tracking of progress.²⁵ As previously observed, the lack of data on cultural diversity in the legal profession has been an issue for the AALA. Accountability and targets are the next stage. It is incumbent on organisations like the LCA, LIV, and our major law firms to lead the profession on this.

Lastly, in terms of culture, there is a need to deal with bias and discrimination, and to actively cultivate diverse leaders.²⁶ The study referred to by Waleed Aly deals with bias at the recruitment stage. While that may be relatively easy to address, eg through the use of blind CVs, the issue becomes harder to monitor and address at more senior levels where selection criteria becomes more subjective and so 'prejudice can trump diversity'.²⁷ This is where the cultivation of diverse leaders can be critical.

IV OPENING UP THE INTERSECTION

Since Jane Hyun coined the term 'bamboo ceiling', there has been growing recognition that issues around cultural diversity in business need to be addressed in our society.²⁸ The support for the recent AHRC report from "Corporate Australia" acknowledges both the inherent importance of having discrimination free workplaces at all levels, as well as the role of diversity and inclusion in ensuring that Australia is best placed to meet the challenges and benefit from the opportunities of a globalised economy in the 21st century.

²⁴ Asian Australian Lawyers Association, above n 7, 11.

²⁵ Ibid 15–20.

²⁶ Ibid 21–27.

²⁷ Ibid 21.

²⁸ Jane Hyun, *Breaking the Bamboo Ceiling: Career Strategies for Asians* (HarperCollins Publishers, 2005).

While the legal profession has been characteristically conservative when it comes to matters of diversity and inclusion and remains structurally challenged in addressing gender diversity, there are emerging signs that the intersection is opening up.²⁹ There is growing recognition of unconscious bias, with many firms embracing programs to address such biases and provide opportunities for talented lawyers to progress, whether they are female, Asian, or have diverse sexuality. Like the corner of Elizabeth and Flinders Street in downtown Melbourne, when the green pedestrian lights up, it should be possible for people to move forward in multiple directions at the same time.

²⁹ For example, in March 2017, a number of large law firms committed to a cultural diversity initiative; see Katie Walsh, 'Law firms unite to shake up appearance: cultural diversity pledge', *Australian Financial Review* (online), 22 March 2017 <<http://www.afr.com/news/law-firms-unite-to-shake-up-appearance-cultural-diversity-pledge-20170320-gv2ha2>>.

REFERENCE LIST

A Articles/Books/Reports

Hyun, Jane, *Breaking the Bamboo Ceiling: Career Strategies for Asians* (HarperCollins Publishers, 2005)

B Other

Aly, Waleed, 'The curse of Australia's silent pervasive racism', *The Age* (online), 5 April 2013 <<http://www.theage.com.au/comment/curse-of-australias-silent-pervasive-racism-20130404-2h9i1.html#ixzz3hegg9lvv>>

Asian Australian Lawyers Association, *The Asian Australian Lawyers Association launches in New South Wales* (10 November 2015) Asian Australian Lawyers Association <<http://aala.org.au/3625658>>

Asian Australian Lawyers Association, *The Australian Legal Profession: A snapshot of Asian Australian diversity in 2015* (April 2015) Asian Australian Lawyers Association <<http://aala.org.au/Resources/Documents/aala-cultural-diversity-analysis-2015-infographic-final.pdf>>

Australian Human Rights Commission, *Leading for Change – A blueprint for cultural diversity and inclusive leadership* (July 2016) Australian Human Rights Commission <https://www.humanrights.gov.au/sites/default/files/document/publication/2016_AHRC%20Leading%20for%20change.pdf>

Bullock, Lara, *A long way to go on the road to diversity* (16 September 2016) Lawyers Weekly <<http://www.lawyersweekly.com.au/podcasts/19575-podcast-a-long-way-to-go-on-the-road-of-diversity>>

Campbell, Ruth and J Barton Hack, Greig, *Grata Flos Matilda (1880-1958)* (2006) Australian Dictionary of Biography Online <<http://adb.anu.edu.au/biography/greig-grata-flos-matilda-7049>>

College of Law, *Encouraging gender diversity in the legal profession* (13 March 2014) College of Law <<https://www.collaw.edu.au/insights/encouraging-gender-diversity-legal-profession/>>

Diversity Council of Australia, *Cracking the Cultural Ceiling: Future Proofing your Business in the Asian Century* (2014) Diversity Council of Australia <<https://www.dca.org.au/cracking-cultural-ceiling/index.html>>

Hunt, Vivian, Dennis Layton and Sara Prince, *Why diversity matters* (2 February 2015) McKinsey & Company <<http://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>>

Kelly, W Sean and Christie Smith, 'What if the road to inclusion were really an intersection?', *Deloitte University Press* (online), 11 December 2014 <<http://dupress.com/articles/multidimensional-diversity/>>

Lack, John, *Ah Ket, William (19876-1936)* (2006) Australian Dictionary of Biography Online <<http://adb.anu.edu.au/biography/ah-ket-william-4979>>

Law Council of Australia, *National Model Gender Equitable Briefing Policy* (June 2016) Law Council of Australia <http://www.lawcouncil.asn.au/lawcouncil/images/National_Model_Gender_Equitable_Briefing_Policy_-_June_2016.pdf>

Law Society of New South Wales, *2014 Profile of the Solicitors of New South Wales* (March 2015) The Law Society of New South Wales <<http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/942948.pdf>>

Steinwall, Ray, *Addressing cultural diversity in the Australian judiciary* (30 April 2014) Diversity Council of Australia <<https://www.dca.org.au/blogs/view/14/Addressing+cultural+diversity+in+the+Australian+judiciary>>

Walsh, Katie, 'Law firms untie to shake up appearance: cultural diversity pledge', *Australian Financial Review* (online), 22 March

2017<<http://www.afr.com/news/law-firms-unite-to-shake-up-appearance-cultural-diversity-pledge-20170320-gv2ha2>>

Woodhill, Samantha, 'Firm announces ambassador ahead of equal pay day', *The Australasian Lawyer* (online), 7 September 2016

<[http://www.australasianlawyer.com.au/news/firm-announces-ambassador-ahead-of-equal-pay-day-222948.aspx?keyword=gender diversity](http://www.australasianlawyer.com.au/news/firm-announces-ambassador-ahead-of-equal-pay-day-222948.aspx?keyword=gender%20diversity)>