



The Power of Inclusion
Pride in Law 3rd Annual Address
Banco Court of the Supreme Court
15 November 2019

The Hon Justice A Philippides
Court of Appeal

Chief Justice Holmes, distinguished guests, colleagues, ladies and gentlemen –

I start by acknowledging the traditional owners of the land on which we gather, the Turrbul people and the Jagera people, and pay my respects to their elders, past and present, and to the community today.

Pride in Law

I am honoured to give this address at the invitation of Mr Dean Clifford-Jones, President of Pride in Law. This important organisation was launched in July 2017. Its outstanding leadership has provided visibility, education and advocacy and a forum for discussion of issues of importance to the LGBTIQ+ community in the legal profession.

Diversity, Inclusion and Equity

All those who aspire to be lawyers and those who practice in the law are inspired by concepts of equality, fairness and equity. And so the issue of diversity and inclusion goes to the very heart of why many lawyers commence a career in law, even if they might lose sight of that later in their career. But, although the legal system is premised on a fundamental concept of equality, equal treatment has not been a value that has defined the experience of all who work within the legal profession. However, there has been a growing and strong movement towards diversity and inclusion across the legal profession that is part of a wider diversity revolution. That diversity revolution is probably the most important revolution occurring in the workplace in recent times. In



this context, diversity is *much* more than gender. The narrative around diversity extends to all aspects of difference between people and how they identify including, gender, ethnicity, sexuality, age, race, religion, disability, and socioeconomic status. There can be no priority lane when it comes to diversity.

And diversity is just the first step towards achieving lasting change.¹ Inclusion also plays a critical part in “realising the benefits of diversity”.² Without genuine inclusion, diversity is just a box ticking exercise. Inclusion allows individuals with different life experiences to feel a sense of belonging and empowerment by feeling welcomed and respected and that their input is relied on and valued. An inclusive environment is one where difference is understood and embraced as a strength rather than being a basis for exclusion.

An important aspect of the diversity revolution has been in highlighting the toxicity of exclusion. That is the “people like us” paradigm. The harm that flows from exclusionary practices which extend opportunity and advancement only to a closed group reflective of those who would be gatekeepers is multifold. Exclusion impacts on individuals and society on three levels.

Firstly, exclusion impacts on an individual level in significant ways, including emotionally and psychologically, with well-known impacts on mental and physical health. The Law Council of Australia has highlighted the work of BeyondBlue in reporting that those in the LGBTIQ+ community are more likely to suffer adverse mental health issues than the rest of the population. BeyondBlue also reports on the link between ‘discrimination, prejudice, abuse and exclusion that LGBTIQ+ people often experience’.³

Secondly, exclusion also diminishes those who practice exclusion by lessening their own ability to learn and gain from the knowledge and insight of others. For when we reach out to include, we not only empower those we welcome, but we also transform



ourselves. Research shows that being inclusive has the capacity not only to improve the wellbeing of another, but also one's own wellbeing and happiness.⁴

Lastly, at a societal level, exclusion operates in a corrosive way. Exclusion undermines the essential dynamic of trust, which is the glue that allows society to operate cohesively and efficiently. Trust requires the creation of a safe environment. Without inclusion, and the respect that accompanies it, the hospitable environment required for trust to flourish cannot be established.

The different journeys of diversity

The experience of diversity and inclusion comprises many different journeys. My own experience and journey of diversity that has been one to do with gender and cultural background. When I embarked on my career path, my identity, in terms of my gender and cultural background was not reflected in the mainstream. And diversity was definitely not a buzz word!

I entered the legal profession in 1984. At that time, both gender, and cultural diversity were profoundly lacking in the profession. And while, at the current day, these issues remain very pressing, they were even more pronounced when I began my career in law. When I started in practice as a barrister, there was not a single female judicial officer on the Supreme or District Court. Significant inroads have been made in that regard and today, several female judicial officers are present just at this event (including the Chief Justice of the Supreme Court). For almost all of my judicial career, I have been the sole judge on the court on which I sit of a non Anglo-Celtic heritage. But today, the President of our Court of Appeal also reflects a cultural and linguistically diverse background. And recently, we have seen the appointment of Indigenous Australians to Queensland Courts. This is not to say that a great deal is not still to be done on issues of diversity and inclusion. Far from it! But more that the goalposts have widened.



And when I look at the composition of the young lawyers before me here today, I am full of optimism for the future of both yourselves, diversity, and, crucially, the law itself. The point is not simply that all of those of a diverse background benefit from the power of inclusion, but that the legal profession is advanced by your involvement and concepts of justice are enriched and improved.

The role of millennials

A large part of my optimism for the future stems from the radically inclusive nature of the current generation, the millennial generation, and the proactive organisations that they have established to promote diversity and provide supportive and inclusive environments. Pride in Law is an example of such a body. It allows for an authentic and important voice to be heard that speaks from the lived experience of millennials. And when I look at other bodies that I have had the privilege of being involved with and that promote other aspects of diversity in the law, such as the Hellenic Australian Lawyers Association, the Asian Australian Lawyers Association, and the Indigenous Lawyers Association of Queensland, I see ample justification for that optimism in the change being embraced and effected by millennials.

The millennial generation is expected to comprise nearly 75 per cent of the workforce by 2025. I have spoken before of its uniqueness.⁵ Apart from being the most diverse generation to date, it is the most technologically savvy and digitally connected. Millennials are adaptive and comfortable with the fast pace of technological change and quick to embrace and experiment with new technologies. They have also grown up in a demographically diverse society.

Since 2015, Deloitte and the Billie Jean King Leadership Initiative have collaborated on research⁶ into understanding how the millennial generation is influencing approaches to diversity and inclusion and altering workplace culture, as they constitute the majority in the workplace. The research⁷ identified instructive generational differences in definitions and perspectives of diversity and inclusion between



millennials and previous generations, comprised of baby boomers and generation X. Some of the research was outlined in a study, entitled, *The Radical Transformation of Diversity and Inclusion*, which observed that previous generations tended to view diversity “through the lens of morality (the right thing to do), compliance, and equality”. Unlike their predecessors, who focussed on providing “traditionally diverse and inclusive workplaces” that were equally accepting and integrated individuals of all identities, millennials perceive diversity as extending “well beyond the concept of integration of demographic differences”.⁸

The study showed that millennials commonly see diversity in terms of what has been called “cognitive diversity”.⁹ They see diversity in terms of diversity of thought, ideas and perspectives. That is, the blending of unique perspectives that a diverse group brings to a team, and how the knowledge, experience, and insights of diverse individuals can contribute to innovative outcomes. Millennials are the first generation to focus on “cognitive diversity as essential for an inclusive culture that supports engagement, empowerment, and authenticity”.¹⁰ So for millennials, diversity means embracing a variety of cultures and perspectives that can work together to solve problems and foster innovation.

The study also found that millennials have altered perceptions of inclusion. It pointed out that, while previous generations defined inclusion as the “acceptance and tolerance of demographically diverse individuals”, millennials increasingly understand it in terms of an inclusive workplace culture.¹¹ They define inclusion as more about a culture that facilitates collaboration and where leadership is supportive of individual differences and perspectives, transparent, accessible, communicative, and engaging. They are interested in a collaborative non-hierarchical culture that provides flexibility and the opportunity to engage seamlessly across an organisation.

Millennials also seek inclusive workplaces that foster self-expression and acceptance of thoughts and opinions and do not require them to “downplay their differences in order to get ahead”.¹² They are a generation that is refusing to leave their identity at



the door of their workplace. On the contrary, they believe that difference brings value and plays a key role in achieving the best outcomes and solutions. They believe that being forced to hide your true self and identity at work is corrosive to ongoing mental and physical wellbeing. For this reason, it is important that organisations such as Pride in Law continue their excellent work in raising awareness of the need for diversity in workplaces, using the lived experience of their members to assist in this regard.

The case for diversity and inclusion

The moral case¹³ for diversity and inclusion is at the centre of federal and state anti-discrimination legislation which, at its core, contains the important concepts of fundamental human rights and dignity. Such legislation seeks to ensure that each person is treated equally and fairly and that individuals are not hindered by their difference from pursuing opportunity and achieving advancement.

The economic case for diversity and inclusion is now very well established. In 2015, in its report *Diversity Matters*, McKinsey and Company examined diversity and inclusion in the corporate world.¹⁴ It looked at corporate data across a number of countries that indicated that companies with more diverse workforces performed financially better. In a follow up report, *Delivering through Diversity*,¹⁵ the findings of McKinsey's earlier report, as to the relationship between diversity and performance, were confirmed. A statistically significant correlation was found between greater levels of diversity in corporate *leadership* and outperformance in the relevant industry peer groups. And there are many other such reports.

The case for diversity in the legal profession was set out compellingly in a recent detailed report by the Law Society of New South Wales.¹⁶ It was the first comprehensive report of this nature carried out by a law society in Australia. It was based on research that showed that organisations that valued diversity and had a culture of inclusion were able to recruit and retain high performing staff, improve



productivity and performance and increase organisational competitiveness and growth.

The New South Wales Law Society report made the following points:

1. In terms of recruitment and retention of highly skilled staff:¹⁷

Workplaces that actively promote diversity and inclusion are able to attract and draw from a larger recruitment pool. Law firms and other organisations that prioritise inclusion send an important message that they will maximise the potential of each individual by allowing them to be their authentic self. Such employers are not only likely to have a competitive edge when recruiting applicants, but are also likely to create environments which have high retention rates. Employees may be more likely to remain with an organisation where there is a proactive diversity 'climate' as they may perceive a tangible benefit to being in an environment that they view as fair.

Further, low retention rates are expensive. The opportunity cost of losing talented staff, recruiting and replacing them, and the potential loss of clients, has been estimated as amounting to a total cost of between 90% and 200% of the annual salary of the position.¹⁸ So there is an expensive lesson to be learnt in failing to understand the economic case for diversity and inclusion.

2. In terms of improved productivity and performance:¹⁹

Diversity and inclusion across a law firm or organisation is a significant marker of productivity. The report highlighted data that suggested a correlation between inclusion and increased work attendance²⁰ and a correlation between inclusive environments and improved team performance and productivity.²¹

Diversity Australia has noted that research by a number of scholars (such as Scott E. Page, James Surowiecki and Nancy Adler) have pointed to the better results that can be generated by diverse working groups, compared with non-diverse



groups even though they comprise those with individual excellence. But there is a proviso that this applies only where there is “inclusion and effective management of diversity”.²²

3. There is, of course, a reputational aspect:

The report observes that “Firms and solicitors with diverse and inclusive workplaces and practices can expect to benefit from an enhanced *reputation* in the broader community and improved access to an increasingly diverse client base. This applies not only to the increased diversity of the client base, but also to work done for international organisations and in overseas markets... Conversely, complaints or findings of discrimination or harassment can cause serious reputational damage to a law firm or organisation, reducing [its] ability to attract and retain staff and clients and adversely impacting business outcomes”.²³ (emphasis added)

The need for leadership

A report on LGBTIQ+ perspectives on workplace inclusion by PwC highlights that there has been a “quantum leap forward” across organisations of all shapes and sizes in support of LGBTIQ+ employees in the last decade.²⁴

That change is reflected in law firms from small practices to top tier firms who have stepped forward to demonstrate inclusive leadership. That leadership is evident in the many law firms that have teamed up with LGBTIQ+ advocates,²⁵ and have gone on to adopt workplace policies that are directed to providing support through in-house networks. That leadership is also evident in those who make the legal system accessible to the LGBTIQ+ community through pro bono legal advice and representation. That inclusion is also reflected in the Law Council of Australia’s leadership in promoting full and equal participation across the legal profession in ensuring LGBTIQ+ people are part of a welcoming workplace where they are valued.²⁶ Law firms that demonstrate outstanding commitment to LGBTIQ+ inclusion are rightly



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recognised in the Australian Workplace Equality Index and there are now many awards that are conducted annually, directed at applauding achievement in the area of diversity and inclusion in the law.

In all this progress, visible leadership has been crucial. No one has done more to provide visible and authentic leadership for the LGBTIQ+ community in Australia, and beyond, than the former justice of the High Court of Australia, the Honourable Michael Kirby AC and it is appropriate that I pay tribute to his outstanding national and international leadership.

There are, of course, many forms of leadership. True cultural change that reflects genuine inclusion requires a top down approach. But leadership is also able to be demonstrated by grass-roots driven initiatives. Pride in Law is a powerful example of such an initiative. It is led by those who can speak from lived experience, and who have the courage to use their insights to change the landscape by highlighting what exclusion looks like, and what inclusion can achieve.

To Pride in Law and the LGBTIQ+ community in the law, I hope that in giving this address and by the presence of the very many here this evening from a broad range of the legal profession including the judiciary, law firms, the Queensland Law Society, the Bar Association and the corporate sphere, you are able to see a tangible expression of the power of inclusion.

On a final note (if you will excuse the pun), you will soon hear a performance from LawchestraQ. It is also an initiative of millennials that seeks to provide an inclusive space for social engagement and mental wellness for lawyers by meeting regularly to perform music together. One of the things that struck me, and was a joy, when I recently attended a rehearsal of the orchestra was how evident it was from the composition of those present and their interaction that diversity, so rare when I embarked on a legal career, is considered an unremarkable given.

I truly feel the future is in very good hands.



Endnotes

- ¹ Frances Brooks-Taplett, Matt Krentz, Justin Dean and Gabrielle Novacek, 'Diversity Is Just the First Step' (24 April 2019) available at: <https://www.bcg.com/en-au/publications/2019/diversity-first-step-inclusion-comes-next.aspx>.
- ² Law Society of New South Wales, 'Diversity and Inclusion in the Legal Profession: the Business Case' (2018) available at: https://www.lawsociety.com.au/sites/default/files/2018-06/LS1856_Policy_DIC_BusinessCase_2018_v2_final.pdf.
- ³ Law Council of Australia, 'Making your legal practice LGBTI+ Friendly' (2017) available at: <https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/making-your-legal-practice-lgbti-friendly>.
- ⁴ See, for example: Ben C. Fletcher, 'Diversity and Inclusiveness Is Good for your Well-being' (18 September 2016) available at: <https://www.psychologytoday.com/au/blog/do-something-different/201609/diversity-and-inclusiveness-is-good-your-well-being>; <https://dspd.me/business/the-evidence/>.
- ⁵ The Hon Justice A Philippides, '[The Future Legal Profession: Innovation through Technology and Diversity](#)', address given at the QUT Law Society *Meet the profession* evening, 14 March 2018.
- ⁶ Christie Smith and Stephanie Turner, 'The Radical Transformation of Diversity and Inclusion – The Millennial Influence' (Deloitte University – The Leadership Center for inclusion, 2015) available at <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>; Christie Smith and Stephanie Turner, 'The Millennial Majority is Transforming your culture' (Deloitte University – The Leadership Center for Inclusion, 2017) available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-millennial-majority-will-transform-your-culture.pdf>.
- ⁷ Christie Smith and Stephanie Turner, 'The Radical Transformation of Diversity and Inclusion – The Millennial Influence' (Deloitte University – The Leadership Center for inclusion, 2015) available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>, 13-15.
- ⁸ Christie Smith and Stephanie Turner, 'The Radical Transformation of Diversity and Inclusion – The Millennial Influence' (Deloitte University – The Leadership Center for inclusion, 2015) available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>, 7 & 16.
- ⁹ Christie Smith and Stephanie Turner, 'The Radical Transformation of Diversity and Inclusion – The Millennial Influence' (Deloitte University – The Leadership Center for inclusion, 2015) available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>, 5.
- ¹⁰ Christie Smith and Stephanie Turner, 'The Radical Transformation of Diversity and Inclusion – The Millennial Influence' (Deloitte University – The Leadership Center for inclusion, 2015) available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>, 5.
- ¹¹ Christie Smith and Stephanie Turner, 'The Radical Transformation of Diversity and Inclusion – The Millennial Influence' (Deloitte University – The Leadership Center for inclusion, 2015) available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>, 9.
- ¹² Christie Smith and Stephanie Turner, 'The Radical Transformation of Diversity and Inclusion – The Millennial Influence' (Deloitte University – The Leadership Center for inclusion, 2015) available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>, 15.



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- 18 Society for Human Resource Management, *Retaining Talent: A guide to analysing and managing employee turnover* (2008) 3, as cited in Law Society of New South Wales, 'Diversity and Inclusion in the Legal Profession: the Business Case' (2018) available at: https://www.lawsociety.com.au/sites/default/files/2018-06/LS1856_Policy_DIC_BusinessCase_2018_v2_final.pdf, 5. See also: Monisha Kapila, Ericka Hines and Martha Searby, 'Why Diversity, Equity and Inclusion Matter' (October 6, 2016) available at: <https://independentsector.org/resource/why-diversity-equity-and-inclusion-matter/>.
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- 22 As cited in Diversity Australia, 'Thought Leadership Panel' (2020) available at: <https://www.diversityaustralia.com.au/thought-leadership-panel/>.
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- 24 PriceWaterhouseCoopers, 'LGBTI perspectives on workplace inclusion' June 2016 (available at): <https://www.pwc.com.au/publications/pdf/workplace-inclusion-survey-jun16.pdf>, 4.
- 25 See, for example: Jerome Doraisamy, 'Clayton Utz hosts "Pazing the Way" event for LGBTIQ+ women' (8 July 2019) *Lawyers Weekly*, available at: <https://www.lawyersweekly.com.au/biglaw/26026-clayton-utz-hosts-paving-the-way-event-for-lgbtqi-women>.
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