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Legal profession adopts targets to help erode gender bias

SUE GILCHRIST *and* COURTNEY ROBERTSON *and* LARISSA ANDELMAN

By **SUE GILCHRIST, COURTNEY ROBERTSON** and **LARISSA ANDELMAN**

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Women make up the majority of the legal profession and for the past 20 years have been consistently entering it at a higher rate than men.

Yet women continue to be under-represented in senior leadership positions. This is particularly the case in law firms.

Despite efforts to retain women, law firms have been unable to address the disparity between the high number of women entering the profession and the number of partners they account for in law firms.

This promotion season, the Women Lawyers' Association of NSW encourages law firms to set a gender diversity target: what gets measured gets managed.

In NSW, women account for about 58 per cent of practitioners aged from 30 to 49 years, the age bracket practitioners would be expected to occupy senior leadership positions such as partnership.

About 64 per cent of law graduates entering the profession are women.

While those numbers drop to less than half in the 50-59 age bracket, the fact that women account for only about 27 per cent of law firm partners shows it is not simply a numbers game.

The reasons for this disparity are well known and include the fact that law firm leadership has not solved unconscious bias in its recruitment, retention and promotion practices.

Regardless of a woman's capabilities or commitment in the workplace, her desire or ability to have children, or her personal circumstances in terms of family around her, gender stereotypes continue to inform decision-making.

Across workplaces, women report high rates of discrimination on the basis of sex, pregnancy and family responsibilities. A recent survey conducted by the Law Society of NSW Bar Association also found that one in three women had been sexually harassed in their current workplaces.

Whether women leave law firms before making partner or they remain and are overlooked for partner positions, it is clear that many law firms are not tapping the full talent pool when they look to create partners.

The lack of diversity at the top of law firms further entrenches existing biases.

After success in other industries such as banking – which like the law, has a pipeline problem but only at one end of it – gender diversity targets are being used to address the lack of gender diversity in law firm partnerships.

Studies have shown that gender diversity targets are effective in:

- Crystallising an organisation's gender diversity goals

- Disrupting the status quo particularly where time has failed to correct the disparity between a high number of female employees and the small leadership cohort they comprise
- Prompting organisational focus to drive change
- Providing a framework around which initiatives and policies which facilitate meeting the target can be implemented
- Holding leadership to account
- Demonstrating that the organisation is taking the issue seriously, which can have flow-on effects for business, recruitment and retention.

The legal profession has seen a number of firms set gender diversity targets in recent times. Gilbert + Tobin has set a target of 40 per cent female Clayton Utz's target is 35 per cent by 2022, while Minter Ellison has a target of 30 per cent by 2020.

Among the global players, Allens Linklaters and Herbert Smith Freehills have set targets of 35 per cent by 2022 and 2023 respectively, King & Wood Mallesons per cent by 2025 while Ashurst wants 33 per cent by 2022.

Baker McKenzie has recently announced aspirational targets set at 40/40/20 per cent gender diversity to represent 40 per cent women, 40 per cent flexible (women, men or non-binary persons).

Gender diversity targets are not without criticism. Opponents have long argued that gender diversity targets are unfair and women promoted because they really deserve a seat at the table. To the contrary, the disparity between the high number of women in law and the small proportion of law firm partners suggests that it is unfair not to have them.

Moreover, we are advocating for a target, not a quota: women are not promoted because of a target, but they are more likely to be "seen" as a result of targets demand.

The Women Lawyers' Association of NSW encourages law firms to set an achievable and measurable gender diversity target for each partnership goal of parity, the association supports the immediate setting of a 40/40/20 target as a way to achieve it.

That is, females comprise 40 per cent of promotions or partnership admissions, males comprise 40 per cent and the remaining 20 per cent can vary in the candidate pool.

If law firms are unable to meet this target in any one year, then a three-year rolling average should be adopted.

Sue Gilchrist and Courtney Robertson are on the executive committee of the Women Lawyers' Association of NSW. Larissa Andelman, the association's barrister. Ms Gilchrist is a partner and member of the global council at Herbert Smith Freehills and Ms Robertson is a lawyer at Gilbert + Tobin.