

# DIVERSITY IN THE WORKPLACE

## The Need for Diverse Women in the Workplace

- 1 Three weeks ago, Kamala Harris, a woman of colour and of Indian descent, was elected to the highest position held by a woman in United States history – Vice President. In doing so she shattered a glass ceiling that had entrenched the power of white men in American politics for more than two centuries.
- 2 Kamala Harris's elevation embodies the very multiculturalism and diversity that defines America but has been largely absent from the upper echelons of power in US politics.
- 3 President Elect Joe Biden's decision to select a woman, and a woman of colour, as his running mate was significant. At the very least, it was a recognition of the critical role that black women played in his election success (for example, Stacey Abrams in Georgia).<sup>1</sup> It was also an explicit acknowledgment of the value of diversity.
- 4 Biden chose Harris because he saw her as beneficial to his presidential ticket.<sup>2</sup> Her presence motivated key voting blocks.<sup>3</sup> The very characteristics that made Harris a minority were ultimately perceived to be some of her greatest assets.
- 5 The 2020 US election resulted in a record number of women voted into the US Congress (at least 141). This included a record number of women of colour (at least 51) and Native American women (6). It also included the first non-binary State lawmaker, Mauree Turner, a queer, black hijab wearing muslim in Oklahoma.<sup>4</sup>

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<sup>1</sup> Burns, Alexander and Glueck, Katie, 'Kamala Harris is Biden's Choice for Vice President' *The New York Times*, 11 August 2020, 3.

<sup>2</sup> Burns et al, 'Kamala Harris is Biden's Choice for Vice President', *The New York Times*, 11 August 2020, 2.

<sup>3</sup> Burns et al, 'Kamala Harris is Biden's Choice for Vice President', *The New York Times*, 11 August 2020, 1.

<sup>4</sup> Armus, Teo, 'A Muslim millennial was elected the country's first out nonbinary lawmaker – in Oklahoma', *The Washington Post*, 5 November 2020, 1.

- 6 The representation of diverse women in US politics has been steadily increasing. That is, this is a trend, not a statistical aberration.
- 7 Why? How? These questions are best left to others far more qualified than myself to answer. But if 2020 has demonstrated anything, it has been of the capacity of women to lead in uncertain times. Countries and jurisdictions led by women have fared significantly better during the pandemic.<sup>5</sup> A comparative analysis of data from 35 countries showed that those governed by women experienced fewer Covid-19 deaths per capita and flattened the curve more rapidly and more effectively.<sup>6</sup> Women did not hesitate to adopt precautionary measures recognising that while there would be an economic detriment in doing so, the consequences of inaction would be far worse both financially and from a human health perspective.<sup>7</sup>
- 8 Some commentators have argued that female leaders have leveraged unique and innate characteristics traditionally associated with their identified gender to protect and make their citizens safe.<sup>8</sup> While this analysis is at risk of reliance on outmoded tropes, there can be no doubt that attributes such as empathy and compassion have proved to be strengths, not weaknesses, during this most challenging time.<sup>9</sup> The strong-man style of leadership has in large measure been an abject failure at dealing with the virus as Brazil and America bear mortal witness. In short, leaders identifying as women have capitalised on their difference to maximise their success at dealing with the contagion.<sup>10</sup> In 2020 diverse leadership has made a very tangible difference to the lives of many. Literally.
- 9 It is, of course, somewhat trite to observe that women are not elected into positions of power to give less qualified persons opportunity simply for the sake

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<sup>5</sup> Coscieme et al, *Women in Power: Female Leadership and Public Health Outcomes During the COVID-19 Pandemic*, (Cambridge University Press, 2020), 2.

<sup>6</sup> Coscieme et al, *Women in Power: Female Leadership and Public Health Outcomes During the COVID-19 Pandemic*, (Cambridge University Press, 2020), 8.

<sup>7</sup> Coscieme et al, *Women in Power: Female Leadership and Public Health Outcomes During the COVID-19 Pandemic*, (Cambridge University Press, 2020), 13.

<sup>8</sup> Johnson, Carol and Blaid Williams, 'Gender and Political Leadership in a Time of COVID', *Politics and Gender* (2020), 2.

<sup>9</sup> Johnson et al, 'Gender and Political Leadership in a Time of COVID', *Politics and Gender* (2020), 2.

<sup>10</sup> Johnson et al, 'Gender and Political Leadership in a Time of COVID', *Politics and Gender* (2020), 1.

of diversity.<sup>11</sup> Women are chosen because people have faith in their ability to be effective and responsive; to produce outcomes; to initiate change. There is a perception, either explicit or implicit, that what makes women, and in particular diverse women, different is a benefit and not a detriment.<sup>12</sup>

### **Wither Diversity in the Legal Profession?**

- 10 The legal profession continues to face considerable challenges when it comes to diversity in the workplace. In NSW, while female law graduates have outnumbered male graduates for over two decades, women continue to be underrepresented in partnerships, senior leadership roles, senior counsel and on superior courts.<sup>13</sup>
- 11 In Australia women make up 52% of all solicitors,<sup>14</sup> but only 27% of partners.<sup>15</sup> There is an average gender pay gap in excess of 25%.<sup>16</sup> For example, in 2017-2018 the average income for female barristers was \$70,227, whereas for males it was \$190,454.<sup>17</sup> In the same financial year, the average income for female lawyers was approximately \$113,000, whereas for their males counterparts it was \$148,000.<sup>18</sup>
- 12 Moreover, less than 1% of practitioners identify as Aboriginal or Torres Strait Islander, and while 20% of lawyers and 25% of law graduates are of Asian ethnicity, this group only comprises 8% of partners.<sup>19</sup>
- 13 I do not have the statistics for those lawyers who identify as belonging to the LGBTQIA+ community (and there may be obvious reasons why such data is

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<sup>11</sup> Christopher McGinness 'Workforce Diversity: Bring Your Whole Self to Work: Maturation of Teamwork Through Diversity', *American Water Works Association Journal* 106(5), 42.

<sup>12</sup> Christopher McGinness 'Workforce Diversity: Bring Your Whole Self to Work: Maturation of Teamwork Through Diversity', *American Water Works Association Journal* 106(5), 42. <sup>13</sup> Women Lawyers Association of NSW (2019), 'Law Firm Comparison Project'.

<sup>13</sup> Women Lawyers Association of NSW (2019), 'Law Firm Comparison Project'.

<sup>14</sup> Urbis (2019), *National Profile of Solicitors*, 1.

<sup>15</sup> Fox, Catherine, 'How do you really change a workplace culture?' *Law Society of NSW Journal*, no 67, 36.

<sup>16</sup> Price, Heather and Errol, 'Unconscious bias: a persistent challenge for female lawyers' *Law Society of NSW Journal* no 70, 72-73.

<sup>17</sup> Price, Heather and Errol, 'Unconscious bias: a persistent challenge for female lawyers' *Law Society of NSW Journal* no 70, 72-73.

<sup>18</sup> Price, Heather and Errol, 'Unconscious bias: a persistent challenge for female lawyers' *Law Society of NSW Journal* no 70, 72-73.

<sup>19</sup> The Law Society of NSW (2017), *Diversity and Inclusion in the Legal Profession: The Business Case*, 3-4.

difficult to obtain), but 66% of practitioners in one survey believe that the profession needs to improve its queer diversity.<sup>20</sup>

- 14 Why has there been such lamentable progress in achieving diversity in the legal profession? The issue is plainly not the effluxion of time; is a failing of action.<sup>21</sup>
- 15 Of course, the harassment, bullying and discrimination – sexual or otherwise - that many women, especially women of colour, or ethnicity or of different sexuality or gender, in the law encounter is hardly conducive to recruitment or retention. Think Dyson Heydon. Several recipients of his reprehensible conduct regrettably changed professions as a consequence of the sexual harassment they suffered. The loss of such promising female legal talent is tragic.

### **Reframing Diversity**

- 16 All too often the discourse around diversity is cast in terms of deficit. That is, being a woman, being Indigenous, or being gay, is framed as a barrier to success that must be overcome. This has a tendency to root diversity in a narrative of disadvantage. That is, the essential characteristics comprising individual diversity are viewed through the prism of impediment, and not as positive attributes, competencies or capabilities.
- 17 In order to increase diversity, any industry, not just the legal industry, must strive to understand why diversity is a hallmark of success. It must reframe the debate.
- 18 Challenging peoples' understanding of what diversity means is central to shaping their attitudes towards it. Diversity must be understood less in terms of how people look and more in terms of how people think. Diversity is not merely about identified gender, race, religion, disability, age or sexual

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<sup>20</sup> Thomas Reuters (2018), *Australian Women in Legal Diversity and Inclusion Survey*, 3.

<sup>21</sup> Larissa Andelman, 'Spotlight on women in the Equality before the Law Bench Book', *Judicial Officers Bulletin* 32(9), 94.

orientation. It is much more. Diverse perspectives, heuristics, and thinking improve our collective ability to solve problems.<sup>22</sup>

- 19 Scott Page, in his book *The Difference* suggests that there are two types of diversity: cognitive and identity diversity.
- 20 Cognitive diversity comprises perspective, interpretations and heuristics.<sup>23</sup> Perspective is the framework governing how people see the world.<sup>24</sup> Interpretation is the way that people classify events and outcomes.<sup>25</sup> Heuristics are the tools that people use to solve problems.<sup>26</sup>
- 21 Identity diversity encompasses race, identified gender, ethnicity, sexual orientation, age and disability.<sup>27</sup>
- 22 Cognitive diversity and identity diversity are complimentary.<sup>28</sup> This is because two persons belonging to different identity groups (that is, who are identity diverse), and who therefore have different lived experience, will tend to acquire different cognitive tools (cognitive diversity).<sup>29</sup> This is because how an individual experiences the world influences how they perceive it.<sup>30</sup>
- 23 A person's 'diversity toolbox', describes the unique attributes that they will bring to problem solving. The metaphor more appropriately conceives difference as something that enables rather than disables.

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<sup>22</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), prelude.

<sup>23</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 8.

<sup>24</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 8.

<sup>25</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 8.

<sup>26</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 8.

<sup>27</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 22.

<sup>28</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 22.

<sup>29</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 22.

<sup>30</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 22.

- 24 In addition, in the knowledge economy of the 21<sup>st</sup> Century, the description accords difference value: diversity is now a form of economic capital.
- 25 Page has tested the efficacy of his diversity toolbox construct. He studied two groups of people: one random and diverse; and one that consisted of the perceived strong individual performers. They participated in various problem-solving tasks. The randomised diverse group consistently outperformed the collection of so-called superior performers. The results caused him to formulate that collective ability equals individual ability plus diversity.<sup>31</sup> Put simply, collections of people with diverse perspectives outperform collections of people who rely on homogenous perspectives.<sup>32</sup>
- 26 A 2017 Boston Consulting Group study sought quantify the impact that diversity has on innovation. The authors surveyed companies (principally European) examining the impact of diversity in terms of gender, country of origin, career path, industry, age and academic background.<sup>33</sup> They also analysed innovation revenue, that is, the share of revenue that companies made from products and services produced in the last three years.<sup>34</sup>
- 27 The study revealed a direct and statistically significant correlation between management diversity and innovation.<sup>35</sup> Using a diversity index called the blau diversity index, it was found that those companies with index scores above 0.59, the median blau rating, generated 28% more revenue from innovative products and services than companies below that rating.<sup>36</sup>
- 28 Notably, there was no direct correlation between the percentage of women in workforce and the generation of innovation revenue. A threshold was required, namely, more than 20% of management positions.<sup>37</sup> Below this percentage

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<sup>31</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 10.

<sup>32</sup> Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press, 2008), 10.

<sup>33</sup> Boston Consulting Group (2017), 'The Mix That Matters', 3.

<sup>34</sup> Boston Consulting Group (2017), 'The Mix That Matters', 3.

<sup>35</sup> Boston Consulting Group (2017), 'The Mix That Matters', 3.

<sup>36</sup> Boston Consulting Group (2017), 'The Mix That Matters', 6.

<sup>37</sup> Boston Consulting Group (2017), 'The Mix That Matters', 10.

organisations remained captive to dominant male perspectives and thinking, and innovation potential was unlikely to be realised.<sup>38</sup>

- 29 What these studies demonstrate is that when the true potential of diversity is properly understood, what was once perceived as ‘the diversity dilemma’, becomes ‘the diversity opportunity’.

### **Talk the Talk and Walk the Talk**

- 30 Changing the way that people talk about diversity, while a necessary start, is not enough. That is, action speak louder than words.
- 31 Having said this, words have normative consequences and if repeated or read often enough have transformative capacity with respect to the way that people think and ultimately the decisions that they make. Discussion inviting an understanding of how difference is beneficial, rather than problematic, will result in diversity being a catalyst for, rather than a barrier to, both individual and collective change.
- 32 Diversity is also more than woke hiring practices. While both critical and laudable, this will not, however, achieve necessary systemic change.<sup>39</sup> Diversity is not just a matter of who to hire, it is also a matter of who to mentor, who to champion, and who to sponsor.
- 33 It is a fact that achieving diversity in the workplace will require greater initial planning, effort, and possibly resourcing, but the data (albeit still somewhat limited) indicates that in the long run tangible benefits will result to everyone concerned.<sup>40</sup>

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<sup>38</sup> Boston Consulting Group (2017), ‘The Mix That Matters’, 10.

<sup>39</sup> Rocio Lorenzo, *How Diversity Makes Teams More Innovative* (Ted Talk delivered at TED@BCG Milan, October 2017).

<sup>40</sup> Rocio Lorenzo, *How Diversity Makes Teams More Innovative* (Ted Talk delivered at TED@BCG Milan, October 2017).

34 So, advocate, plan and promote now for diversity at every level of the workplace in order that, to echo Kamala Harris's already famous words, others may be the first, but they will not be the last.