



Law Council  
OF AUSTRALIA

# Equality – an idea whose time has come

**Speech delivered by Fiona McLeod SC, President, Law Council of Australia at the Margaret Nyland AM Long Lunch, Adelaide.**

**9 June 2017**

Thank you Leah. And thank you Women Lawyers of South Australia for your wonderful work.

Your Honours, including the extraordinary Margaret Nyland, Morry Bailes, President-elect of the Law Council, Stephen Hodder CEO, of the Law Society of South Australia, colleagues and friends.

It is a great joy to be here today to celebrate the contribution made by Margaret, at this lunch held in her honor, and to speak to you today.

I acknowledge the Kaurna people as the traditional custodians of this country. I pay my respects to their Elders and any Elders joining us here. I acknowledge any amongst you who may have Aboriginal heritage and welcome your participation in the profession.

This is now the fifth Margaret Nyland AM Long Lunch, and I thank the Law Society of South Australia and the Women Lawyers Association for continuing to host this excellent event. Its theme of social justice is a worthy tribute to the woman it honours – one of the nation's great advocates of human rights and equality.

And she is a great mentor. As Margaret and I were posing for photos today I shared with her some knowledge of how to pose, newly acquired by me but by no means perfected, after observing the very glamorous Michaelia Cash working the camera. Michaelia demonstrated that if one stands like this – with ones hips turned this way, and chest turned this way and one arm out like this – one could present the perfect silhouette. Margaret added, that one then needs to extend ones neck like a tortoise like so – and drop ones chin like so and then look up. You probably already know these things, but I plan on presenting the entire speech like this!

Of course, we all know something of Margaret's lifetime of achievement and tireless advocacy, yet I think it is worth reflecting on the environment when she first entered the law.

A number of the Law Council's major initiatives in recent years have formed part of the Inclusion and Diversity Program – to counter the pronounced gender bias we know exists in the profession today. But if we think things have a long way to go today – and they do – consider when Margaret entered the law.

At the time of her admission, in March 1965, there was only one other woman admitted to the law. Her fearlessness is an inspiration for us all. Early in her career she memorably stood up to a Magistrate and male prosecutor who both wanted to clear the court of female presence in a matter relating to homosexuality. She was appearing as counsel for the defendant and agitated her right to stay in the court room.

As Leah mentioned, she was the second woman appointed to both the Supreme Court and District Court bench in South Australia. She also presided on the first all-female Court of Criminal Appeal.

During the course of her esteemed career, she has served as Chairperson of the South Australian Sex Discrimination Board, the Handicapped Persons Discrimination Tribunal, and the National Legal Aid Advisory Committee.

She was also Patron of the Women Lawyers' Association, a Chair and later Convener of the Commonwealth Social Security Appeals Tribunal, a Member of the Legal Practitioners Complaints Committee and Deputy Presiding Officer of the Equal Opportunity Tribunal of South Australia.

Furthermore, she was a Member of the Family Court/Department for Community Welfare Joint Working Party for two years; a Party that investigated the problems of access in cases of child abuse.

As Chair of the Law Foundation of South Australia – from 1995 to 2012 – she oversaw over \$2.75 billion contributed to projects and welfare centres, educational projects and community assistance organisations – to promote and develop access to justice and progress the law.

Most recently, her work as the Royal Commissioner for Child Protection has been transformative. The aim of the inquiry was to provide recommendations for ways in which the current systems could be improved with the wellbeing of the child being the most important factor. To compile her report, the Child Protection Systems Royal Commission Report, Ms Nyland heard from over 381 witnesses, received 341 submissions, examined 10,800 documents and conducted 74 stakeholder engagements.

The Report was published in August last year, and following its recommendations the South Australian Government is now establishing a new Department for Child Protection. Other recommendations will be implemented over time with an initial financial commitment of \$200 million from the Government.

In addition to a remarkably full and varied brief of work, Margaret is also known for her generous contribution to mentoring young lawyers. She has had approximately 20 associates and is known to have had a positive long-lasting impact on young people, supporting them in the pivotal early journey of their legal careers. I am sure her outstanding contribution does and will continue to inspire many of us.

It certainly sounds impressive when someone reflects on a list of achievements – and I have no doubt you will all leave here today planning to get back to work, intent on accumulating an impressive list for yourselves to one day have read out when each of you appears as a guest speaker on a day just like this.

Or probably you are just wondering what on earth to do this weekend.

But either way, let that not be all that life is about – the accumulation of stuff, the building of cvs and impressive sounding titles.

Each of us is more than that. And that would be a life wasted.

Individually and collectively, we are some of the most powerful and most privileged human beings on the planet – now and at any time in our history.

And the world is open to you.

Today in the glow, and the company of such an inspiring leader, Margaret Nyland, is it time to ask what it is you will do in the service of others.

It's good to reflect on where we are and what matters to us.

A couple of years ago I stood in a court room in Darwin during a Royal Commission and listened as elderly men and women described their broken lives – lives they were not particularly proud of having lived since they were horribly abused as children in State care, removed from their parents under the well-intended removal policies of government at the time. A short while ago the civil claims of those people were resolved.

Earlier this year, I stood on the steps of Parliament House in Canberra with Indigenous leaders as they called for a new collaborative approach to addressing entrenched disadvantage of our First Peoples.

And a month later, I stood in another Royal Commission appearing for government officials describing steps they were taking to ensure children in detention are protected from abuse.

None of this was in my wildest imagination when I started my law degree, or started life in the Bar.

I had no idea that the law protects, and that sometimes it fails to protect, those most in need of just outcomes.

The law is described by some as a calling. After 30 years of it I am only beginning to understand what that means. Some problems, some issues that confront us demand that we think deeply about our morality, about what is done in our names, what is acted upon without question, without scrutiny, and without objection.

No doubt most of you can think of two or three things immediately that make you angry, or that make you despair. Think of those things now – and who or what is affected by those things.

The law can be a vehicle for doing good. For righting wrongs and giving people a voice.

And it can be a vehicle of oppression.

There are cases today of people being abused or discriminated against in our names, in the pursuit it is said, of a higher good. A good that is decided by others, guided by their own judgments about what is necessary and what is acceptable conduct.

These cases call us to test our own moral compass – to reflect on what are we prepared to condone through silence, what are we prepared to walk past, what is it we have left for others to respond to.

Each of you will have things you care about deeply, profoundly. Some of those things are obvious – like our families, however fragile they may be.

Other things we are not aware of until we are confronted by injustice or immorality.

You have tools to do something about these things that very few other people on the planet have.

You all are highly intelligent and have learned how to find things out, you are trained to identify and solve problems, and you are all articulate.

You can find the words that persuade and that cut through the endless chatter and spin – words that resonate with people so they begin to listen, words that speak to power and demand a response and a change in behavior.

The law can teach you to prepare arguments that are based on evidence and authority, that are nuanced, without bitterness, personal attack or exaggeration. You will learn to see the other side of an argument set it out, fairly.

While it may not seem like it at the time, you are practicing a skill that is vital to the strength of our democracy, that will shield us against the overreach of dictators – that protects the rule of law one case at a time, defending the independence of the courts, testing the boundaries of executive power, building careful respectful arguments founded upon testable propositions.

That strength is not found in fear or anger, in tweets or the shouting of slogans.

So if you see something that you are uncomfortable about, ask questions. If the answer is that this is how we have always done things, ask why and point to the injustice. If you see something that is wrong, hurtful or awful, speak out.

If you do not, then we will see more of the same.

Which brings me to the profession.

I want to talk to you about transforming the profession. Perhaps not surprisingly, this requires us to transform ourselves. The way we practice, the way we are treated, the respect and admiration we express for each other. It also means we need to continue on this journey of transforming our attitudes to difference – and build a new kind of normal in each of our relationships with each other.

As we approach the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights later this year, it is timely to ask how far have we progressed in realising the aspirations of the time, how far we have secured:

*... fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.*

Back in 1948 we were emerging from World War II. Women had ably stepped in to fill all manner of professional and trade roles.

Yet after the war the culture shifted, away from women's advancement and prosperity to secure the more fragile goals of global peace and restoration.

The world was reeling in the face of unspeakable atrocities, the maiming, slaughter and displacement of millions of lives, the destructive impact of weapons of mass destruction. Women stepped back – to comfort and heal the shattered men returning from war. We took off our overalls and put on our aprons and in doing so we relinquished the opportunity to cement our place as natural and equal partners in leadership.

Now, more than a century after universal suffrage in Australia we are still waiting for the promise of the Universal Declaration to be fulfilled.

Yes, we are women judges and lawyers, academics and senior public servants, occasionally we are ministers, governors and Chief Justices, but our numbers lag well behind. We have achieved some firsts in public life, increasingly participating in decision-making, but we are way off the groundswell needed to sustain our representation at senior levels.

Let's consider the make-up of the profession.

Women enter the legal profession at higher rates than men, 63 per cent of law graduates are women.

However, women represent 46 per cent of the practising profession.

Even less continue into senior legal roles:

- 19 per cent of senior positions in law firms;
- 19 per cent of the Bar's population; and
- 10 per cent of Queen's Counsel and Senior Counsel position.

It's tempting to settle for the sentiment I hear over and over – 'give it up, you have equality, move on'.

But I ask you – how many of you love your work? How many of you would love it more if you loved your working environment?

We can continue to press for transformation of the profession, making incremental gains but if we do so in a society that continues to assume women's voices are weaker, we have a fundamental problem.

We are still told by men – and by women – that we are being precious, or over reacting to bad behavior and that we need to 'man up' to get ahead.

I give you some examples close to home. Over my time at the Bar of 26 years, I have personally experienced: drunken uninvited groping; sleazy suggestive remarks; direct attempts at intimidation inside and outside the courtroom; and, worst of all in some ways, the pernicious sexist putdowns and banter that demeans women, dressed up as good humour yet eating away at our confidence like the dripping of water on stone.

What is our aspiration? What do we want to look like?

We want it to be fair. A professional environment that fosters and rewards individual ability, application and integrity, shielded from discriminatory practices.

So what do we need to do to get there?

We truly have it better than most. For us the challenges are sleep, close personal mentoring, or deep pockets to outsource the rest of life.

We need attention to our whole needs, including health and wellbeing.

And we need recruitment and promotion that is free of bias.

We need to chip away at the underlying bias in our culture that reinforces our perception that women *are* in fact less capable – as lawyers and in fact at most things.

Bias, as a neurological, sometimes unconscious phenomenon, takes many forms. Our brains process millions of pieces of information every second. When you entered this room you immediately, you unconsciously recognised any observable differences in racial appearance from yourselves in a 150<sup>th</sup> of a second. In 120<sup>th</sup> second you noticed the gender of everyone in your line of sight. You then noticed any unusual physical characteristics of those present.

This is not a criticism, it probably is a survival trait that helped us succeed in the wild. To recognise threats and potential rewards. Our impulsive neurological processing has helped us survive and succeed as a species.

We notice those like us and those different, and we act upon those biases as though they were valid judgments about people's abilities.

When we are unaware of those biases and act upon our inherent assumption about capabilities in recruiting, promotion, opportunities for next case or new client, we are making poor business decisions.

If we seek to go beyond unconscious bias to consider diversity as a value in its itself, we are said to be choosing 'other than on merit' or resorting to tokenism without acknowledging that the cumulative effect of many, many decisions affected by bias has preferenced some over others over the years resulting in disparity of opportunity to participate and to develop. So that 'merit' is not, in fact, available to all with talent and dedication.

While women are becoming more visible in the Courtroom, in the leadership of Courts and professional organisations, in the boardroom and are busy "leaning in" all over the place, we still only occasionally take the lead role. This perpetuates or confirms the validity of biases affecting our initial selection process.

In a significant class action I conducted in Melbourne in recent years, not one of the expert witnesses across a huge range of scientific and engineering disciplines was a woman.

The last time I saw a female expert scientific witness in Court was years ago. She might have been a town planner. Perhaps an obstetrician.

The lack of visibility reaffirms the validity of our choices.

When did you last see women take up more than a single article on a single page of the sports pages in the papers? Or anywhere in the business pages?

In this morning's Australian newspaper there were no images of women at all in the sports pages and only one, Gina Reinhert, in the business section. There were none at all in the legal section. In fact, there were more cows in the entire back section of the paper than women.

In the Age today there was only one image of women, the Vixens, in six pages of sports coverage. I thought there was another, but it turned out to be a Socceroo with a 'man bun.'

We just don't see women. Women who do stand-up have fleeting recognition then are ignored or put down – their physical attributes attacked, their contribution to public life diminished. Especially as they age.

It now seems normal.

A decade ago, we thought the best way to support the advancement of women lawyers in numbers was to emphasise gendered differences – stereotypically thought to include nurturing, caring and conciliatory tendencies for women compared with chivalrous, authoritative and aggressive tendencies for men.

The problem is that these stereotypes reinforced the unconscious biases at play – that inherently men make better partners, barristers and judges because of those qualities.

Because they make better heroes and that's apparently what clients and the law demands.

While there is certainly a case for a diversity of talents in all workplaces including the Bar, we are beginning to realise that the differences model that dominates popular thinking about gender may not have helped our marketing of women lawyers that much.

You may be aware of gender recruitment studies that demonstrate women are less successful on 'merit' grounds under ordinary interview conditions but succeed equally once gender identifiers are removed. Female musicians who failed the original audition were successfully selected after re-auditioning behind a screen, results leaping from only 10 per cent originally chosen to close to 50 per cent in blind trial.

I recently read a published study '*The Gender Similarities Hypothesis*' examining meta-data studies concerning the stereotype gendered physical and psychological differences. The study (which reviewed 1000s of peer reviewed published studies) concludes that there are three statistically significant differences between men and women.

1. Physical strength – for example, men throw further and faster than women, especially after puberty;
2. Physical aggression – men demonstrate more physical aggression, but interestingly on verbal aggression measures there is no significant difference; and
3. What is the third statistically significant difference? Men *report* thinking more about in casual sex.

So let us kill off, for once and for all, the notion that men and women are different when it comes to any *relevant* talent or tendency as legal advisers, strategists and advocates.

Some people exhibit different personal traits. Those differences enrich us all. Painting women as having a set of gender specific characteristics relevant to their performance as lawyers, as advocates or as negotiations or anything else is potentially divisive and pushes younger women towards a need to conform to the advocate-warrior stereotype.

It also reinforces the stereotype that leads inevitably to decisions about who get hard cases and arduous briefs – not out of malice in 99 per cent cases, but well intended because they need to send you home to your kids or to protect you from the vulgar client, or just that it's a man's job because it needs a fighter.

This reinforces our notions about our heroes, our national icons: the digger in his slouch hat and uniform with shining badges defending the weak with force of arms; the glorious strength of the young footy player; and even the laconic joker entertaining mates over the BBQ. Marketing experts understand this mythology all too well.

But apart from some nominally and transitionally heroic women, or imaginary hot women with capes and super powers, our heroes are nearly all male and in many instances their sexual prowess and physical aggression is condoned and even glorified.

This aggression translates into men's own expectations about how they should be men, how they should relate to us and to each other.

So we must identify and address bias – and consider how best to encourage real action on this issue.

We need leadership.

As Elizabeth Broderick has said "*you can't be what you can't see*".

When leaders speak, rationally and with authority, they are heard.

We need them to state the business case, to direct policy developments and commitments, to identify and nurture the next cohort.

To convince others that it costs, in terms of morale, productivity, human capital, the costs of retraining and lost investment, to lose women from the workforce.

We need leaders to reward effective behaviour. To insist upon transparency of criteria for advancement and the allocation of work.

We need our next generation of leaders to know, that they will be judged suitable for advancement when they demonstrate a commitment to diversity.

We definitely need to see women leading – not one off's – but in large numbers.

And when those leaders do speak out, we, all of us, need to thank and support them with a multitude of voices so they know they are not alone, not undermined by pernicious sniping.

For those of us pressing the agenda it has been sometimes difficult, perplexing and even sometimes humiliating to be told we are only complaining because we are no good at it.

We go hell for leather, impatient at the pace of change, only to be worn out by the effort and the lack of progress.

So we need institutional change. Generational change, change that sticks.

We want to be counted as capable, hardworking, clever, talented advocates and lawyers who are women, not as handmaidens who had to adopt male stereotypes of conduct to succeed.

We want work to be a place we want to come to work, not continually looking over our shoulders for the sexist put down or innuendo, or afraid of worse.

I invite you to consider that the reason it *has* been so hard is because women are not valued as men are, that our social and economic standing reflects a deeply entrenched belief that girls are less worthy.

Our privileged view as professionals can sometimes mask the grinding reality for other women in society.

The pay differential translates into lifelong insecurity and dependency for many.

Women experience violence and abuse in confounding numbers and are increasingly at risk of homelessness, incarceration, mental illness and isolation.

We often suffer in silence, paralysed by the fear of worse if we seek help.

Women continue to be impoverished, prostituted, trafficked, abducted, idealised, assaulted, exploited and murdered in the home, at work, in public here and overseas.

We are swamped by images of women's bodies selling things – de-identified, disembodied, objectified, pornographised, ever younger and thinner, photo-shopped beyond any resemblance to real faces and bodies in the fulfillment of endless appetite for sexual fulfillment.

We expect women in the public eye to be young and thin, then criticise them for being so.

We join in the chorus of criticism of each other's appearances, we put up with the vile marketing humor where the thin veneer of violence sells things to men who are encouraged to enjoy or turn a blind eye.

We sexualise our girls way too young.

We have become overwhelmed and inured to stories of abuse, with such low expectations of the treatment of women and children here and overseas that we barely register the treatment as abuse until it touches someone we love.

We vanish our elder women and condone the silencing of their voices and the diminishing of their sexuality.

We cut down women who succeed.

The solutions for these issues are complex but are certainly within our grasp – with will and creativity.

At the core, we need to expose and reframe our deep held beliefs about girls and women's worth in society – to celebrate the feisty boisterous nature of girls, to encourage them to express themselves and their needs and dreams fully and frankly as we do our boys.

To resist the temptation to idealise and sexualise them.

To observe and record the points along the way at which being 'like a girl' diminishes us, rather than celebrates us.

We need to start with a common vision.

What would the world look like if those girls and women of 1948 had followed the path promised by the Universal Declaration over the last 70 years.

If we were truly free, truly empowered to participate in society, fed, educated, housed, employed and employing others, respected, appreciated, expressing themselves freely, leading our institutions and our communities?

We have been there at a tipping point, and we can be there again.

We need the economic tools to demonstrate that when women participate in society the whole community benefits, to reframe policy decisions to factor in the long-term cost to community when women do not.

The financial know-how to show that new business models that entrench flexibility and reward new fee structures can be highly profitable.

We need to harness the skills of those with a proven track record of creating and then entrenching organisational change. Change that outlives the occasional passionate leader.

And we need the tools to sell the message that equality is an idea whose time has come.

To fire imaginations and bring others with us.

Lawyers by training are problem solvers, excited by puzzles and the emotional and intellectual stimulation that comes from solving them.

Think about your favorite moment at work – did it involved intense focus on a new factual situation, a joy of discovery of some turning point in a case or deal that led to the breakthrough?

We are conflict managers, familiar with human experience, using our wits and instincts and turning it to our particular ends.

Our tools are words. Words that reason, berate, soothe, cajole and admonish.

But words alone have not been enough to break through. So we need new tools.

We have never before been equipped with the power to reach out to others so cheaply and quickly, to harness an unimaginable power of creativity and collaboration with grass roots funding and direct participation. In the last decade we have seen the emergence of GetUp, Avaaz, All Out, the Rules and Peers to name a few.

Social media absorbs our attention for hours of every day. People are longing for ways to hear and tell, to participate in stories that resonate and unite us in our common humanity.

We need to tell simple and authentic stories, of success and survival, of pain and loss, to share and respect the contribution of others as we have done for centuries.

To pool the collective wisdom of the fireplace, where lessons are learned in stories told in the leaping flames, accepting that this problem is so big that we need all of us to solve it.

We need to take our stories and collaborate with those who speak directly through pictures, music and simple messages to millions.

To collect up the dreamers, activists, organisers, creatives, nerds, story tellers, economists and policy designers to create a new wave, to help us move on into a new century for women, the one promised to us decades ago.

We have been swamped by male heroic images for so long that we are not even aware of the absence of women.

We need to be swamped with images of our everyday success – not the super women prime ministers, governors and Chief Justices, but mums working at home and fathers working from home too, making lunches and braiding their daughters' hair for school.

We need to see young girls, without make-up, studying science, working with power tools and surfing; women leading meetings and giving expert evidence in court; women pilots, engineers, fire fighters, soldiers and miners.

And we need to see women lawyers, doing it full-time and part-time, leading teams and firms and court cases, on the bench and off to make a new normal.

Normal women, juggling and coping, alongside men who are juggling and coping.

We need to back each other up in our endeavors – so when the question of promotion or advancement or appointment comes up and someone says 'she's not ready' or 'she's not really that good', a chorus of our voices say 'yes she is'.

Each of you in this room is one of the most privileged best educated enabled woman on the planet. It's a great honour, held on trust for future women, for the profession and the future.

So I want to ask some things of you today for the years ahead.

Be authentic – with each other and with others.

Be wary of group-think – there is no way right way to be a lawyer, there is no right personality. Diversity is to be cherished and valued.

Be brave in the goals you set for yourself and then walk tall through life unashamed of those goals.

Use your voice – in defence of those who are powerless and those who are vulnerable, and to name injustice when you see it, because there is nothing more satisfying than using your learning and your training in the service of others.

And finally, I want you to walk through life remembering that you have the capacity to light up the room, any room – because you are all extraordinary.

And when you know it, you are unstoppable.

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