



## Précis Paper

### Gendered Language in the Law

A discussion about a campaign by Bonnie Logan, a Monash law student, to amend gender specific language in the law so that it is gender neutral.

#### **Discussion Includes**

- What is the campaign about?
- How often is the masculine default pronoun used?
- How did the campaign start?
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- Why is there a pushback against feminist agendas in general?
- Other feminist legal issues
- The impact of language on people's attitudes and beliefs

## Précis Paper

# Gendered Language in the Law

In this edition of BenchTV, Emma McNicol (Doctoral Candidate, Monash University, Melbourne) and Bonnie Logan (Final Year Law Student & Research Associate, Monash University, Melbourne) discuss A discussion about a campaign by Bonnie Logan, a Monash law student, to amend gender specific language in legislation so that it is gender neutral.

### What is the campaign about?

1. Bonnie Logan is leading a campaign seeking to address gender specific language in Victorian legislation. The campaign is seeking to make change to the gendered language that pre-dates the gender neutral drafting policy that is currently employed by the Victorian Government and the Office of the Chief Parliamentary Council.
2. Currently, new legislation being passed is written using gender neutral language. However, the laws which have not been amended still employ him/his etc. Further, there are provisions which are being amended without changing the masculine pronoun which is what the current drafting policies recommend.

### How often is the masculine default pronoun used?

3. Changing all existing Victorian legislation to gender neutral language would be quite an overhaul. This is one of the counter arguments to the campaign.
4. In the older acts, there are at least 100 references to masculine pronouns. Nevertheless, it has been achieved by other jurisdictions, such as Canada where they reviewed all their legislation which pre-dated the new policies.
5. Gender specific language remains in legislation across all jurisdictions in Australia as well as Federal Statute. Arguably, Victoria is a good place to start as they pride themselves on the progress that has been made toward gender equality especially in regard to law reform.

### How did the campaign start?

6. The campaign started with a petition that was signed by many members of the legal community and beyond. The petition gained 750 odd signatures.

7. The attention led to an article in The Age which illustrated some of the high profile support the petition had garnered, such as the President of the Law Institute of Victoria, the Dean of La Trobe Law School and the Gender Equality Commissioner.
8. This attention helped get the attention of the Attorney General's office. A meeting with Bonnie Logan made it clear that they are not wanting to respond to this with any legislation whatsoever. However, she presented them with less laborious solutions such as amending an Act a year, then deciding on a course of action based on how that amendment went.
9. However, they were concerned with how long amending an act a year would take. Even so, it is progress and it would illustrate a step being taken toward equality.
10. An alternative is that if they do not want to legislate on it, they could tighten the existing policy so that if provisions are amended, they are amended to be gender neutral.

#### Negativity towards campaign

11. The main counter argument is that there are more pressing, more serious issues at hand than changing language in the legislation. Making the change, however, will actually make a difference to some of the more pressing issues that people point to.
12. This is because the language, whether subconscious or conscious, has an effect on attitudes and beliefs. The purpose of the campaign is to help continue to shift them.
13. Another argument put forward is that it won't make any difference to attitudes. However, the research and literature shows that gendered language does make a difference on people's attitudes.
14. A further argument is that section 37 of the *Acts Interpretation Act 1984* (Vic) already covers the issue as it maintains that any reference to a gender is to include the other gender. However, arguably this is not enough as the issues stemming from gendered language still take place.
15. Whilst it addresses the practical interpretation, it does not address the consequences that stem from the wording.

#### Accuracy

16. Not only does the language not reflect gender neutrality, it is not an accurate reflection of today's norms. Our language doesn't only reinforce attitudes but it reflects them. The legislation as it stands does not match the changing world.
17. Once upon a time, the default masculine pronoun purported to capture everyone. These days we simply need the legislation to reflect a mutating reality which is that women are, for example, lawyers and police people, roles that they would not have played in the past when the legislation was created. As such, some of the language in the text of our law is outdated and archaic.

18. The law reflects morals and values of our society and that it changes alongside what the collective deem right and wrong. This is why laws are reformed and amended to adapt to societal expectations and there should be no exception to the text of the law; it too should adopt what it needs to adapt to the progression of norms.
19. The importance of the intrinsic measure of the Attorney General adopting these changes, would in itself show a cultural shift in the Victorian Legal Community. A moral standard would be set that would state that gender equality is at the foreground of their priorities.

#### Why is there a pushback against feminist agendas in general?

20. Often the criticism is poorly executed and poorly conceived, however it seems to stem from a residual anger in the community against women.
21. What has been done with the campaign is a staged provocation and this can make men and/or women angry
22. In essence it comes from deep seated misogyny which is still part of our Australian psyche. There is a part of Australian masculine identity that is hesitant to fully acknowledge the intellectual autonomy of women and the right of women to advocate for their rights and when it comes to the law especially, there is a fear of the permanent nature of it.

#### Other feminist legal issues

23. One main issue is in representation. Whilst we have recently seen equality in numbers in relation to solicitors in Australia, there is not equality in regard to men and women at the Bar and the Bench.
24. People making the laws should represent the people they are writing them for. One solution would be setting gender quotas for parliamentary candidate selections.
25. If we have representation among the people who write the laws, who enforce the laws and who practice the law, we will see a huge shift in attitudes within the legal profession and also in society as a whole

#### The impact of language on people's attitudes and beliefs

26. There has been so much research and literature on the impact of gendered language and the contribution it has to sexist attitudes and when this gendered language is in an important text such as our law, that governs our society, the effects are even more detrimental.
27. The relationship between language and attitudes or language and behaviours is difficult for people to get their heads around. This can be seen for example in rape culture. People

often fail to see how they joke about rape could have any relationship to a physical act of violence against women.

28. Attitudes underpin acts and language underpins attitudes. A change in the gender specific language in legislation will represent that our community is committed to gender equality and represent that we accept as a society that women are politically active citizens, that they are members of the police, that they are professionals.

## **BIOGRAPHY**

### Emma McNicol

Gender Equality Research Officer, Monash Gender and Family Violence Prevention Centre  
Teaching Associate, Monash School of Languages, Literatures, Cultures and Linguistics

Ms McNicol is a doctoral candidate at the School of Languages, Literatures, Cultures and Linguistics at Monash University (Australia). Her research focuses on the idea of exclusion in the history of feminist philosophy and the work of Simone de Beauvoir. She is also the founder and director of the Melbourne Centre for Feminist Philosophy.

### Bonnie Logan

Final Year Law Student & Research Associate, Monash University, Melbourne

Ms Logan has nearly finished studying a Bachelor of Laws (Honours)/Bachelor of Arts (Criminology) at Monash University. She aims to become a criminal law barrister and academic in the near future.

## References

### Legislation

*Acts Interpretation Act 1984 (Vic)*