



## Précis Paper

### The Bamboo Ceiling in the Australian Legal Profession

Australian Lawyers with Asian heritage participating in the profession.

#### **Discussion Includes**

- Asian Australians are underrepresented as partners of law firms, at the Bar and in the judiciary
- What reasons might exist for this underrepresentation?
- What can and should be done about it? Should the judiciary be reflective of Australian society?

## Précis Paper

### The Bamboo Ceiling in the Australian Legal Profession

1. In this edition of BenchTV, CEO of Diverse Australasian Women's Network (DAWN), and Reynah Tang, President of the Asian Australian Lawyers Association (AALA), present on the topic of Asian Australian cultural diversity in the Australian legal profession.
2. The aim of DAWN, a not-for-profit organisation, is to drive the conversation around the need to increase representation of culturally diverse individuals in leadership teams across mainstream institutions, with a particular focus in the Australian market. Similarly, a key focus of AALA is to create greater cultural diversity within the senior ranks of the legal profession through investigation of the reasons for the underrepresentation of senior Asian lawyers, and seeking solutions that address that imbalance.
3. A cultural diversity report was recently prepared by AALA concerning the cultural diversity of the Australian legal sector with respect to Asian Australian lawyers. This report from AALA was prepared in light of anecdotal concern surrounding the representation of Asian Australians in the legal profession. As there was no existing data in this area from State law societies or government organisations, AALA felt there was a need to fill this information vacuum by compiling this report.
4. The report found that:
  - a. Only 3.1% of lawyers in law firms with 10 or more partners are Asian Australian.
  - b. Only 1.6% of barristers are Asian Australian.
  - c. Only 0.8% of judges were Asian Australian.
5. The results of the report are in stark contrast to the far greater number of law students with an Asian Australian background. This observation is based on anecdotal evidence as law schools do not currently collect data on the cultural background of their students. Similarly, the NSW Law Society does not have data on the cultural background of practising lawyers.
6. Given the number of Asian Australian students graduating law school, there are arguments that the underrepresentation of Asian Australian lawyers will fix itself and that it is just a matter of time. However, these arguments remain uncorroborated in terms of women in the legal profession as women have been similarly graduating law school in high numbers, and more recently they have begun to outnumber men, but they still remain underrepresented in the legal profession, particularly at senior levels. Therefore, Mr Tang believes it is unlikely that the underrepresentation of Asian Australian lawyers will fix itself.

7. To help counter the underrepresentation, AALA have introduced a mentoring program to connect Asian Australian lawyers with senior legal professionals. This is intended to further the career development of Asian Australian lawyers and broaden their legal networks in order to help advance them into senior legal positions. However, there is a limit to the effectiveness of such initiatives as there are factors at play beyond the control of Asian Australian lawyers. In particular, there are often unconscious and natural biases present in the recruitment process where interviewers will prefer to hire candidates with whom they share common characteristics, including cultural background. As the current Australian industry is dominated by those with an Anglo-Celtic background, there can be a natural and unconscious tendency for these people to hire candidates of the same cultural background. Therefore, it is also important to raise awareness of these unconscious biases within the industry so that employers are cognisant of them during the recruitment process. Furthermore, the notions of leadership need to be changed so that it is not viewed through a narrow lens as this tends to disadvantage Asian Australians who, despite being hard workers, are not necessarily seen as leadership material because they're not outspoken enough or do not go drinking enough.
8. A common criticism of groups such as DAWN and AALA are that they advocate a race-based selection process whereby an Asian candidate should be preferred over an Anglo-Celtic candidate if the two candidates are of equal merit and credentials. Both Dai Le and Reynah Tang deny that they are advocating for such a race-based selection process which would undermine a merit-based selection. Rather, given the aforementioned unconscious biases, they are simply advocating for an inclusive approach where Asian Australians have an equal opportunity and platform as their non-Asian counterparts. In this respect, the language used needs to be carefully considered. Mr Tang suggests moving away from 'representation' of Asian Australians, which connotes a guaranteed number of spots for Asian Australians, towards workplaces and institutions which are 'reflective' of Australian society's cultural diversity. This was the term used by former Attorney-General Mark Dreyfus who expressed a desire to see a judiciary which was 'reflective' of our community.
9. There are several benefits to culturally diverse organisations and institutions, with the most prominent benefit being that there will be a better understanding of Asian markets and cultures through the organisation's Asian Australian workforce. An example of this is the importance of Trevor O'Hoy's role as an Asian Australian in the highly successful expansion of Swisse, an Australian health and wellness brand, into the Chinese market. Asian Australians can improve organisational capabilities and assist with the success of Asian ventures. However, despite the 'Asian century' and Australia's increasing economic ties with Asia, the Diversity Council of Australia has released a report showing that those persons that have lived and worked in Asia and who speak Asian languages are not necessarily the ones involved in an organisation's Asian ventures. By failing to utilise Asian-oriented Australians,

an opportunity is being missed to further Australia's economic relationship with Asia, limiting Australia's economic growth.

10. Another benefit of the prevalence of Asian Australians in senior positions is that it will be of inspiration and encouragement to young Asian Australians to pursue their dreams and show them that it is possible to break the 'bamboo ceiling' and achieve success at the highest level in their respective fields. Furthermore, Asian Australian professionals will help to bridge any culture gap for Asian Australian clients. For instance, in the legal industry, there is an increasing number of Asian litigants in courts but these litigants do not generally participate in Alternative Dispute Resolution (ADR) processes, despite being requested to do so by the judge, due to the lack of prevalence and familiarity of ADR in Asian cultural backgrounds.

#### Future Outlook

11. AALA, originally set up in Melbourne, has recently expanded to Sydney, thereby significantly increasing its membership. Now that AALA has expanded into Sydney, Mr Tang and Ms Le are hoping to initiate greater collaboration between the two organisations. Additionally, Mr Tang has been really pleased with the support AALA has been receiving from the wider legal community. For instance, the Law Institute of Victoria recently became a sponsor of the organisation and senior lawyers from Asian and non-Asian backgrounds have volunteered to be part of the mentoring program.
12. Given the results of AALA's cultural diversity report, AALA is now looking to engage with law firms and legal institutions to start the conversation around the underrepresentation of Asian Australians. For example, in relation to new judicial appointments, AALA is encouraging the government to consider whether they are looking wide enough when appointing new judges because if they stick with the traditional sources and recruitment processes then they will likely end up with the same type of people.
13. Through their activities, AALA and DAWN are aiming to broaden the diversity goals of organisations. There is currently a significant focus on gender diversity in most large organisations but diversity in other areas, such as cultural diversity and diversity regarding sexual orientation, is given little, if any, attention.

## **BIOGRAPHY**

### Dai Le

Dai Le is the founder of DAWN (Diverse Australasian Women's Network). Dai Le is a former award-winning journalist, film-maker and broadcaster with the Australian Broadcasting Corporation. In 2008 she stepped into the world of politics standing as a candidate in the NSW State seat of Cabramatta where she caused historic swings turning it into a marginal seat. In September 2012 Dai was elected as Councillor to Fairfield City Council. She is passionate about increased leadership representation of Asian Australian and cultural diverse men and women in mainstream institutions and was named an Australian Financial Review - Westpac Top 100 Women of Influence in 2014.

### Reynah Tang

Reynah Tang is a Tax Partner at Johnson Winter & Slattery in Melbourne and President of the Asian Australian Lawyers Association. He is a past President of the Law Institute of Victoria, and he has also served on the Council of Legal Education and the Law Council of Australia.

## **BIBLIOGRAPHY**

### Websites

Asian Australian Lawyers Association - <http://aala.org.au/>

AALA Cultural Diversity Report 2015 - <http://aala.org.au/cultural-diversity-report-2015>

Diverse Australasian Women's Network - <http://dawn.org.au/>