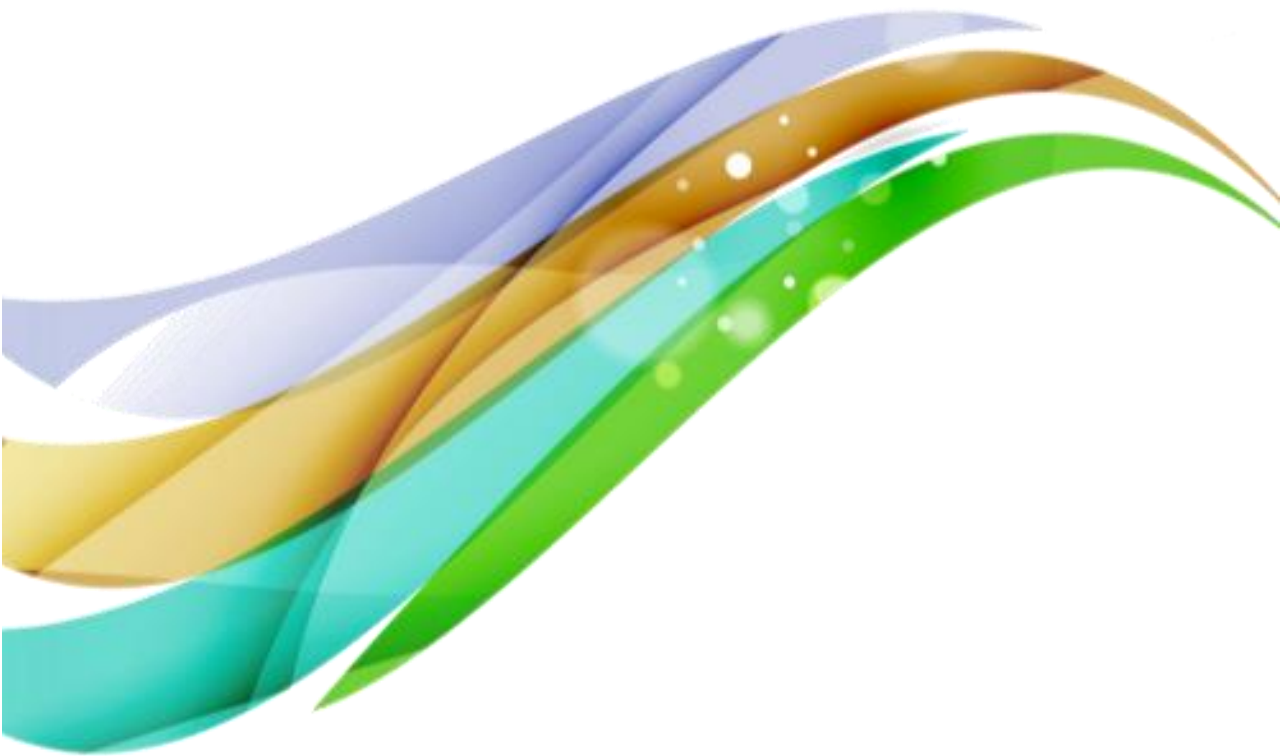


Improving diversity and inclusion within the legal profession: a summary of international initiatives

A working paper

Prepared for the Independent Review of the Regulation of Lawyers and Legal Services in Aotearoa New Zealand

Prepared by consultants from Sapere Research Group
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Purpose

This working paper provides an overview of some initiatives being adopted in other countries to improve inclusion and diversity within the legal profession.

Introduction

This paper provides a brief overview of selected overseas legal professions in terms of improving inclusion and diversity. There are different focus areas that can help create a legal profession that is more representative of society in terms of ethnicity, gender, disability, sexual orientation, socio-economic backgrounds and more inclusive in terms of culture and more aware of unconscious bias including racial bias.

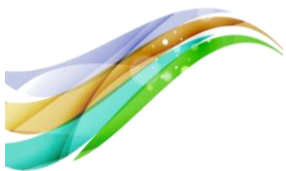
This is a high-level paper, structured by country, and is not intended to be exhaustive. This paper will not detail all initiatives across the included countries, rather it highlights existing initiatives as illustrative examples of each focus area.¹ As an example, while most, if not all, Law Societies will have a work programme related to improving diversity and inclusion, this paper will only set out a selected sample of these.

Change can happen at multiple levels, for example:

- *the legislative level* – the extent to which legislation protects against discrimination. All included countries have primary legislation protecting against discrimination, which apply to the populace and the legal profession.
- *the education level* – initiatives to educate law students on Indigenous culture, inherent bias etc (while outside the scope of the wider project, selected initiatives are included in this paper for interest)
- *the practice level* – for example, by ensuring law firms aim for a culture of diversity and inclusivity
- *the regulator and representation level* – for example, by requiring equity and diversity policies in firms

Both grey literature and peer-reviewed sources were included, and no assessments as to the robustness of any research was undertaken.

¹ Note that some of these initiatives will also go towards improving adaptation to Indigenous peoples in the legal profession, therefore this paper should be read in conjunction with the Adaptation to Indigenous peoples working paper.



A summary of inclusion and diversity initiatives

United Kingdom

Specific legislation

The Equality Act 2010 forms the basis of anti-discrimination law in the UK. The UK's Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 require all firms with 250 or more employees to report on their gender pay gap – a requirement that captures many law firms.

Solicitors Regulation Authority (regulator) – using data and business cases to create change

The Solicitors Regulation Authority published an ethnicity pay gap report which shows the difference between pay received by White staff and staff from a Black, Asian and minority ethnic background. The Authority published the report for the first time in 2022 and will develop an action plan and associated programme of work to address the problem, including learning from best practice.

“We have chosen to publish our ethnicity pay gap data for the first time this year. Although we don't have to do this, we think it is the right thing to do. Some law firms are already publishing this data and we would strongly encourage others to follow suit.”

The Authority also provides data on diversity in the profession and has published a diversity data tool based on a survey carried out in 2021. The tool allows people to view data disaggregated by population (e.g., partners, solicitors, other staff), a characteristic (e.g., age, sex, ethnicity, school type, parental qualification or occupation) and firm type (e.g., number of partners, region).

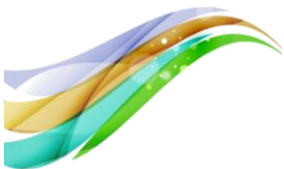
The Solicitors Regulation Authority also published a business case for diversity, which contains practical example of the actions that firms can take, for example, by making changes to their recruitment and progression practices. The case also sets out what the Authority is doing to support firms in improving diversity, for example, engaging with firms and widening access to the profession by encouraging legal apprenticeships and reducing regulatory burdens and costs to solicitors through Code of Conduct reforms.

Bar Standards Board (regulator) – rules requiring equality and diversity policies

The BSB requires all chambers and BSB entities in England and Wales to take reasonable steps to ensure a written equality and diversity policy (rule C110)

The Bar Standards Board (BSB) is the regulatory body for barristers in England and Wales. It has a statutory regulatory objective to “encourage an independent, strong, diverse and effective legal profession” (The Legal Services Act 2007). There are also obligations under the Equality Act 2010.

The BSB published an equality and diversity strategy in 2020 that sets out how the BSB will encourage diversity in the profession, for example, by publishing three good practice case studies about inclusion of different types of disability at the Bar (Bar Standards Board, 2020).



The BSB also has equality and diversity rules that state that all chambers and BSB entities need to take reasonable steps to ensure a written equality and diversity policy (rule C110). Chambers and BSB entities also need to appoint an equality and diversity officer, and ensure regular monitoring is conducted (Bar Standards Board, 2022).

The England and Wales Law Society (representation) – networks aimed at promoting inclusion and diversity

The Law Society is the independent professional body for solicitors in England and Wales and has four networks to help promote inclusion and diversity within the legal profession (Law Society, 2022):

- LGBT+ lawyers
- ethnic minority lawyers
- women lawyers
- lawyers with disabilities.

Law Society of Scotland (regulator and representation) – gender equality roundtables

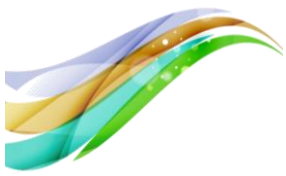
The Law Society of Scotland asked its members to host a series of roundtables that focussed mostly on gender equality. These roundtables looked at the following topics and produced reports on each: flexible working, bias, bullying and harassment and the gender pay gap (Law Society of Scotland, n.d.). The reports give insights across the profession, and the Law Society considered the reports in its creation of a two-year gender equality action plan.

Initiatives aimed at increasing awareness of diversity issues at law school

Table 1 details a cross-university initiative called “The Fairness Project” aimed to prepare UK law students on diversity barriers in the legal profession and provide strategies for overcoming these barriers (McKee et al., 2021).

Table 1: The Fairness Project

Component	Description
What	The Fairness Project – a learning and teaching project on equality and diversity in the legal profession and its impact on employability. It was delivered over three years across three UK law schools. Method varied across years and university.
When	2016-2019
Target group and aim	Internal – aimed at preparing law students on the range of diversity barriers in the legal profession to influence whether the students access the profession.
How	Education sessions had three aims: <ul style="list-style-type: none"> - To raise student awareness of diversity barriers in the legal profession - To provide strategies to find ways through these barriers; and - To raise awareness of any biases in the students themselves.
Results	- There was a positive effect for raising student awareness of barriers, with a substantial shift from baseline awareness.



	<ul style="list-style-type: none"> - Students felt they were at least “quite well equipped” to navigate their own career diversity barriers from 44% pre-activity to 74% post-activity. However, authors recognise that this impact is difficult to measure at this stage as students may be at the early stage of career planning. - The findings on students’ recognition and acknowledgement of their own biases were inconclusive.
Comment	Authors suggest the initiative has potential benefits for law schools across the UK, including in the more traditionally elite universities.

Canada

Specific legislation

The Canadian Human Rights Act 1985 prohibits discrimination on the grounds of: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and conviction for an offence for which a pardon has been granted or a record suspended.

Law Society of British Columbia (regulator) – diversity action plan

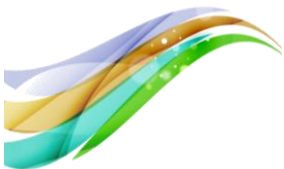
The Equity Diversity and Inclusion Advisory Committee published a Diversity Action Plan with 30 actions that include items that aim to (Equity Diversity and Inclusion Advisory Committee, 2020):

- improve demographic data of the legal profession in British Columbia
- foster diversity within the Law Society
- improve intercultural competence education for lawyers
- improve outreach relating to the Law Society’s equity, diversity and inclusion efforts
- consider further methods to promote the Law Society’s model policies and guides, and consider whether further resources are needed
- review the equity, diversity and inclusion section of the law firm regulation
- review the Legal Profession Act, Law Society Rules, the Code of Professional Conduct for British Columbia for possible improvements.

Law Society of Alberta (regulator) – equity, diversity and inclusion counsel

As part of its education team, the Law Society of Alberta has an equity, diversity and inclusion counsel whose role it is to work with key stakeholders on initiatives aimed at improving equity, diversity and inclusion in the legal profession (Women’s Law Association of Ontario, 2021).

“Through these programs, the Law Society will enhance lawyer competence in Alberta, support legal organizations in fostering safe, equitable, diverse, and inclusive workplaces, and ensure lawyers in Alberta have the resources and skills necessary to provide competent and inclusive legal services to the public.”



United States of America

Specific legislation

There are a number of federal anti-discrimination laws in the United States of America, including:

- Title VII of the Civil Rights Act 1964, which prohibits employment discrimination based on race, colour, religion, sex and national origin
- Equal Pay Act 1963, which protects from sex-based wage discrimination
- Employment Act 1967, which protects persons over 40 years from age-based discrimination
- Americans with Disabilities Act 1990, which protects from employment discrimination based on disability

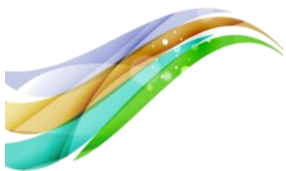
Initiatives aimed at retention of lawyers at the practice level

A study of top 100 law firms in the United States, using data up to 2015, found that, while the firms were all committed to racial diversity as a corporate identity (i.e., externally), that commitment did not extend to the organisational identity (i.e., a shared value among firm members) (Adediran, 2018). The author found that support from management is key in making a commitment to racial diversification into an organisational identity, in addition to individuals making an intentional decision to incorporate diversity, rather than relying on diversity champions (Adediran, 2018).

American Bar Association (representation) – diversity and inclusion centre

The American Bar Association (ABA) Diversity and Inclusion Center houses all of the ABA's resources and initiatives aimed at eliminating racial bias and enhancing diversity and inclusion within the ABA, the legal profession and the justice system (American Bar Association, n.d.). As at June 2022, the Center has the following entities:

- Coalition on Racial and Ethnic Justice, focussing on the development and support of initiatives and research that address social justice issues stemming from the intersection of race and ethnicity within the legal system. As an example of one of the initiatives, it created model legislation/best practices for states to address the school to prison pipeline.
- Commission on Disability Rights, focussing on the development and support of initiatives and research aimed at ensuring full participation in the legal profession by persons with disabilities. As an example of one of the initiatives of the Commission, it created an internship programme with major companies.
- Commission on Hispanic Legal Rights & Responsibilities, focussing on the development and support of initiatives and research aimed at educating lawyers on how to best serve, promote civic responsibility within, and address legal challenges facing the Latino community. As an example of one of the initiatives of the Commission, it created a Spanish translation of the Miranda warnings to assist police with delivery.
- Commission on Racial and Ethnic Diversity in the Profession (examples of work include surveys of legal services and awards honouring lawyers who have promoted diversity in the legal profession).



- Commission on Sexual Orientation and Gender Identity (examples include awards and scholarships).
- Commission on Women in the Profession (examples include research on best practices to reduce bias effects and toolkits for conversations).
- Council for Diversity in the Educational Pipeline (examples include a Judicial Clerkship Programme, and scholarships, awards and community college toolkits).
- Diversity and Inclusion Advisory Council.

Current initiatives include a 21-day habit building challenge aimed at learning more about Native American communities and a Black Lawyers in America Toolkit, aimed at supporting organisations to uplift Black lawyers' experiences and ending practices of implicit bias and racism (American Bar Association, n.d.).

Australia

Specific legislation

Australia's federal anti-discrimination laws are as follows (Attorney-General's Department, n.d.):

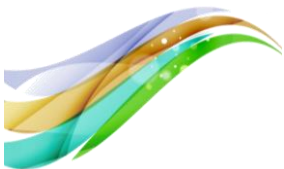
- Age Discrimination Act 2004
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984.

Initiatives aimed at retention of lawyers at the practice level

Table 2 details the results of pilot research into best practices for diversity and inclusion in Australian law firms (Mundy & Seuffert, 2020). This research focussed on the promotion of women to partners in large law firms in Sydney.

Table 2: Diversity and inclusion in Sydney law firms

Component	Description
What	Pilot research into best practices for diversity and inclusion in four large Sydney law firms. Firms near the top of the Women's Lawyers Association of New South Wales Data Comparison Project participated in the research, two with high percentages of female equity partners, and two on the basis that they had initiated innovative strategies designed to retain women lawyers
When	Varies according to firm
Target group and aim	Internal – promotion of women to partners in law firms
How	Varies according to firm but initiatives include: <ul style="list-style-type: none"> - diversity committees - inclusion of diversity and gender equity key performance indicators (KPIs) for managers - provision of unconscious bias training



	<ul style="list-style-type: none"> - targeted offer of practical administrative support services to key talent at peak work periods, which is designed to assist with the balancing of work and family commitments - adoption and implementation of a range of formal strategies within the firms, including leadership, mentoring and sponsorship programs, flexible work policies (including job sharing and part-time), affinity groups, practical support services - behavioural development and training programmes, coaching (including voice coaching sessions), business development programs, panel sessions (eg, a “lean in” type group), networking events, and groups for working parents and people with carer responsibilities - targets, eg one firm had specific targets of 40% of new partners being women, 25% of new equity partners being women and 25% of leadership roles being occupied by women.
Results	<p>In order to achieve their diversity and inclusion goals, the firms participating in the study considered that it was important to:</p> <ul style="list-style-type: none"> - have a strong commitment by managing partners - ensure a fair and inclusive culture.
Comment	<p>Regarding partnership decisions – despite managing partners stating they take a balanced and flexible approach to weighing criteria, senior associates and lawyers were more likely to consider that financial performance was the most important factor.</p>

The Law Council of Australia (representation) – diversity charter

The Law Council of Australia (LCA) is the national representative body of the Australian legal profession. The LCA Diversity Charter states (Law Council of Australia, 2015):

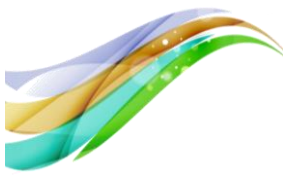
“The Australian legal profession is committed to promoting diversity, equality, respect and inclusion consistent with the principles of justice, integrity, equity and the pursuit of excellence upon which the profession is founded. We recognise that diversity benefits the legal profession and the community as a whole.”

Many Australian law societies and bar associations are signatories to the charter.

Law Institute of Victoria (representation) – diversity committee

The Law Institute of Victoria (LIV) has a diversity committee, aimed at developing policies intended to increase and promote diversity in the profession in the areas of lawyers with disabilities, Indigenous lawyers and women in the profession (Law Institute of Victoria, n.d.).

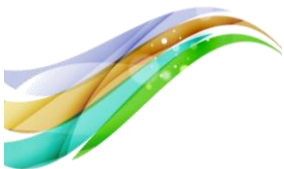
The committee is involved in supporting and implementing initiatives and supports the LIV wellbeing programme which provides support services, professional development and events to promote diversity (Law Institute of Victoria, n.d.).



Law Society of New South Wales (regulator and representation) – making a business case for diversity and inclusion in law firms

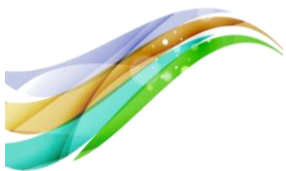
The Law Society of New South Wales has published a business case that provides a rationale for why diversity and inclusion are important within law firms. It identifies specific areas where having a diverse and inclusive culture can improve the performance of a law firm or organisation, and includes tips for law firms to consider when adopting a strategy for improving diversity and inclusion (Law Society of NSW, 2021).

“Diversity and inclusion are practices that make sound economic sense for law firms and other organisations.”



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