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June 2021

Advancing together

RULE OF LAW UPDATES AND PERSPECTIVES

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LexisNexis® Capital Monitor's editorial team prepares the Advancing Together, Rule of Law Updates and Perspectives from the Asia Pacific bulletin. The team is located in the Press Gallery of Parliament House, Canberra.

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IN THIS ISSUE

FOREWORD

Hi, and welcome to the June 2021 edition of Advancing Together.

The last 12-18 months have undoubtedly been challenging for people around the world. The impact of the pandemic has been profound and far reaching, affecting national economies, as well as our ability to work and socialise.

LexisNexis believes in the correlation between the rule of law and economic growth and stability. The rule of law supports an independent justice system whilst promoting access to clear and up to date legislation materials. Through the reliability of the justice system to provide the necessary protections and uphold the rights of individuals and businesses, investor confidence grows which drives opportunity and leads to economic prosperity.

However, accessibility is fundamental to the rule of law. When, we find ourselves at a time where accessibility has been challenged through the restriction of people's movements and with the majority of our communication and access to products and service now being offered online, it's clear to see how the rule of law itself can be, and has been, detrimentally affected by the pandemic.

There are numerous lenses through which to view the impacts of COVID-19 on the rule of law, each raising interesting questions that could be discussed at length. Has the imposition of discretionary powers by Governments over their citizens been carried out in a just way? Is restricting the human right to freedom of movement justifiable in the name of public health? How has the right to work been affected?

For this edition of Advancing Together, we've chosen to focus on an incredibly important topic: gender equality and the rights of minorities in the time of COVID-19. We're considering this complex issue from a number of diverse perspectives right across the Asia Pacific region.

Nicola Nixon and Jane Sloane from the Asia Foundation take a stark look at impact of the pandemic on women. From losing their jobs in higher numbers, to an increase in male violence against women, to the strengthening of patriarchal power in global politics, there is even greater urgency post-pandemic to bring women's rights issues to the fore and rebalance the scales.

In "Respect at work, safe workplaces remain far from reach for Australian women", James Dawson from LexisNexis examines the rampant sexual harassment and gender discrimination that can be found in Australian workplaces, and - most significantly and disappointingly - within our own Government.

Whilst we have seen significant movement towards gender equality, there remains much to do, both in Australia and across the Asia Pacific region. Associate Professor Sally Moyle and Jane Madden from the National Foundation for Australian Women review the current state of gender equality across the APAC region, whilst Associate Professor Ann Black from the University of Queensland examines how, despite a seemingly strong rule of law framework, the small Sultanate of Brunei Darussalam fails to adequately recognise and protect the rights of minorities and the LGBTQ+ community.

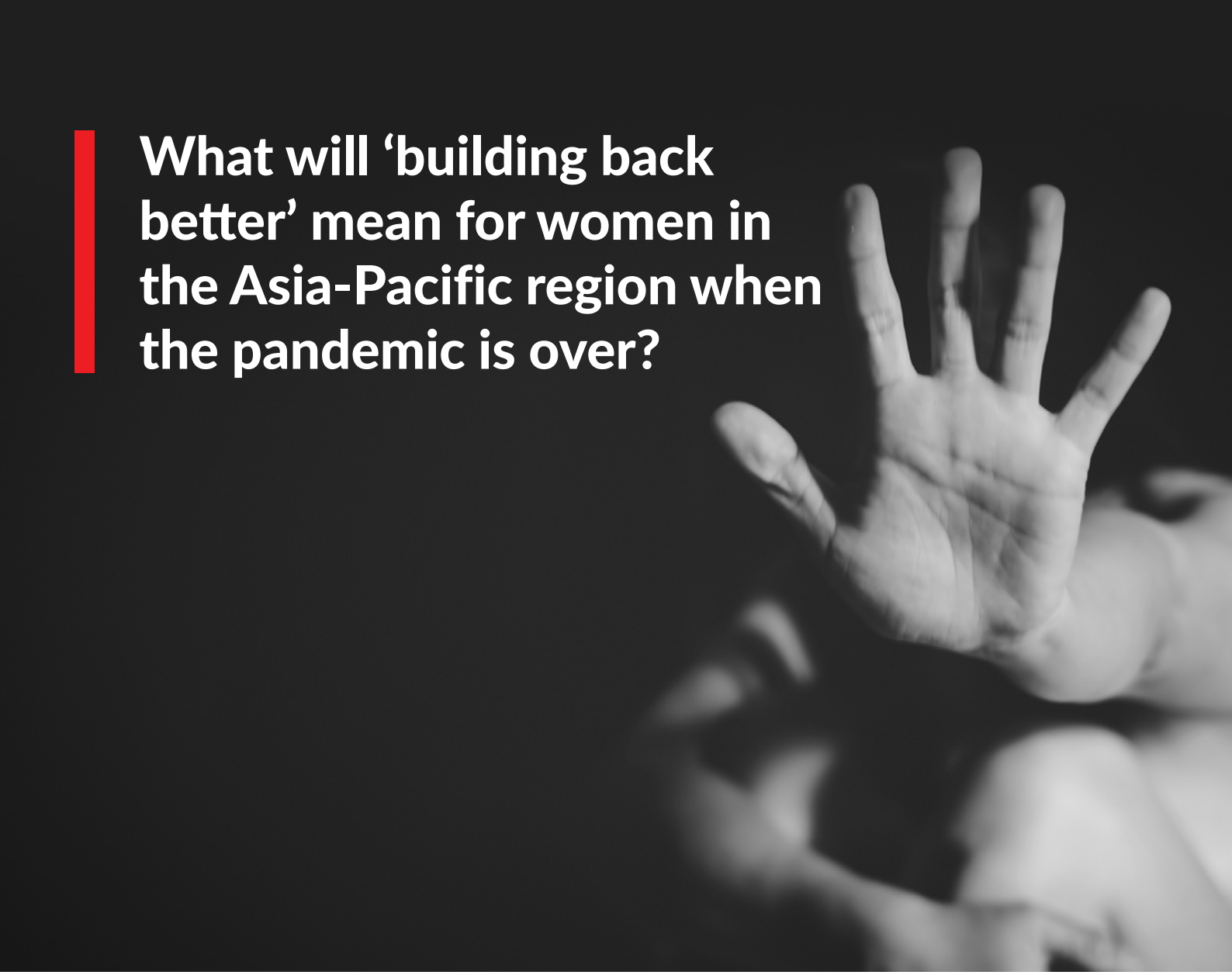
And in "Why quotas matter", Grace Stanhope and Jenna Allen from our Capital Monitor team examine how mandating female representation across our political and democratic institutions can fast-track the full benefits of an equal and diverse society.

The final piece in this edition speaks to our commitment to accessibility in all we do. Carlo Santa Barbara explains how we are making content on Lexis Advance more accessible to vision impaired people through the use of screen readers. Equality is, and always has been, a guiding principle for us at LexisNexis, and we will proudly continue to develop our products and services to be accessible to all people.

For now, take care, stay safe, and enjoy the read. Remember you can always catch up on previous issues of Advancing Together in our Rule of Law blog.

Veronica Rios
Director, Global Associations & Strategic Partnerships

What will 'building back better' mean for women in the Asia-Pacific region when the pandemic is over?



Nicola Nixon

Director Governance,
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It will be some time before the full extent of the impacts of Covid-19 on men and women across the countries and cultures of the Asia-Pacific region is understood or addressed. What we do know, however, is that the pandemic poses risks of a disastrous regression and erosion of women's rights and freedoms.

As early as March 2020, there was **emerging consensus** that progress towards gender equality would be put to the test as the virus spread and a range of restrictions were put in place under lockdown measures. Since then, the economic, social, health, and political consequences of the pandemic for women have been especially severe. As most parts of the region are in the midst of second or third waves of the pandemic with no end in sight, while other parts of the world are coming out the other end, the situation is not likely to improve without concerted effort and action.

Across the region there had been significant improvements in levels of women's participation in the labor force since the 1990s, resulting in greater agency and opportunity for women. However, the pandemic has had a **devastating impact on jobs and incomes**, in particular for women, who are **almost twice as likely to have lost jobs during COVID than men**. The pandemic exposed the deep vulnerabilities within Asia-Pacific labor markets in which the proportion of those in insecure and temporary jobs

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without access to social insurance is anywhere between 50 per cent and 85 per cent. In Southeast and South Asia, and the Pacific, **women are more likely to be employed in informal jobs than men**.

With schools closed – in some countries intermittently and in others since the pandemic commenced – the burden of home schooling has more often fallen to female family members who are therefore more likely to have had to give up work, or reduce their hours. The expectation that women must shoulder rising care and schooling demands is underpinned by patriarchal norms that cast women as primarily responsible for parenting and household labor. As a result, across Asia and the Pacific women are involved in a **much higher proportion of unpaid domestic** work than men.

Lockdowns and the impact of less secure home economies saw a sharp increase in male-perpetrated domestic violence in the Asia-Pacific region as much as elsewhere. In this environment, the gaps in government services were evident and, despite decades of advocacy efforts, the legal frameworks to protect them were shown to be weak and unenforceable. In this environment, many civil society organizations scrambled to pivot with their own response and resources to provide services that met the rising number of women and children in need of support.

This reversal of progress towards gender equality is occurring at a time in which civic spaces in many parts of the region are shrinking as freedoms of expression and association are curtailed. Like many trends exacerbated by the pandemic, emergency response measures provide cover for governments to further limit the activities of civil society actors, particularly those who advocate for just, transparent, and accountable governance. This leaves the available spaces in which civil society and non-government organizations operate and interact increasingly small and constrained. For women's organizations and feminist movements, this is even more difficult as: there are fewer opportunities in which to respond and prevent the erosion of hard-won achievements over the past decades.

These challenges are compounded by the prevalence of models of '**toxic masculinity**' in the public sphere, with multiple illustrations of a '**strong man**' approach to political leadership and the management of the pandemic, despite evidence to suggest **more feminist approaches and models of leadership might be more effective in responding to a crisis** such as this. The mutually reinforcing relationship between authoritarian rule, and the exercise of patriarchal power, along with tightened boundaries around civic spaces profoundly limits opportunities for dissent, dialogue, contestation, and the realization of women's rights. The impact of this situation reverberates at all levels: personal, political, economic, and social.

We paint a bleak picture to highlight the urgency of this situation now and into the future.

There is common reference to 'building back better' in response to the impact of Covid-19. What would that look like for women's rights and opportunities?

Effective support to women's organizations – across ages, issues and ethnicities and other dimensions of experience and identity - and feminist groups and networks is now vital so that they can sustain their operations, organizing, and advocacy efforts. What is most needed are direct funds. Even prior to the pandemic, **only 1 per cent of funding for gender equality went to women's organizations**, even though they are critical to the achievement of gender equality.

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Examples include organizations like **Women in Need** in Sri Lanka, which provides counselling, legal advice and psychosocial services for women experiencing domestic violence, and advocates for policy and legal changes that will prevent that violence; or the Association of Legal Aid for Women in Indonesia which manages a domestic violence hotline, and reports a seven-fold increase in the number of calls since the pandemic began.

Governments should be encouraged to strengthen women's meaningful and equal participation in governance and decision-making, including in relation to Covid-19 recovery; to improve legislation; and to ensure the full and equal participation of women in inclusive approaches to policies, laws, and programs.

Programs like the **Gender Lab** in India that challenge traditional power structures and norms will pave the way for future generations to open opportunities to women. The Gender Lab works directly with boys to confront the fixed notions of masculinity within which they too are constrained. The Gender Lab reaches boys at a critical time in their lives – the preteen and teenage years – to show them how gender equality benefits everyone, and through the Lab, they recognize that they can use the power and privilege society grants them to directly change existing norms about gender and masculinity.

The time is now for a major commitment on the part of political leaders and law and policy makers to turn this tide or – as the **World Economic Forum** has projected – another century will pass before meaningful gender equality is achieved on a global scale.

Women, gender and the rule of law in the Asia-Pacific region

Sally Moyle

Honorary, Associate Professor at the Australian National University and Director of National Foundation for Australian Women

Jane Madden

President of the National Foundation for Australian Women and a Non-executive Director including Chair of the Fred Hollows Foundation. Formerly a Deputy Secretary in the Australian Government and Ambassador, she is Principal of advisory firm, Brickfielder Insights.

Twenty-five years after the historic **Beijing Declaration and Platform for Action** was acclaimed by the governments of the world, we have seen significant progress towards equality between women and men by the nations in our region. Yet no country has anywhere achieved equality.

Worse, we have seen a plateauing of progress, as if near enough is good enough. Yes, real progress would threaten the comfortable status quo. Gender is, after all, a relation of power. Those who hold power profess to seek equality; we need them to mean it and commit to action.

This failure to finish the job is infuriating, because, after decades of dedicated work, research, and advocacy, we are clear about

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the barriers to equality between women and men. We know what would address these barriers. What is lacking is commitment, funding and consistent legal and policy attention.

In our region, for example, we are not even able to monitor progress, with the proportion of gender specific indicators of the Sustainable Development Goals with at least one available data point as low as **eight per cent in Oceania**. Violence against women in our region is amongst the highest in the world. And in only three countries in our region do women represent more than **one-third of elected representatives** of national parliaments.

In Australia, stalled progress is seeing other nations surge past us in international rankings. Over the last 15 years, Australia has fallen from a global ranking of 15th on the World Economic Forum's Global Gender Gap Index to 44th in 2020. This Index considers only the gap in access to rights and resources between women and men, and accounts for the overall wealth of the nation. It is a clear demonstration that Australia has taken the foot off the gender equality accelerator.

Again, we know what we need to do but there is evident complacency. Abortion was only decriminalised in New South Wales last year, and it took a significant campaign by civil society and women in Parliament. Many women in Australia are furious about the sexual harassment and sexual violence in Australian Parliament House, and the uneven Government response. Yet in responding belatedly to the Sex Discrimination Commissioner's **Respect@Work report**,[1] which sat on the then Attorney General's desk for a year, the Government failed to agree to legislate to take the onus off individuals who have experienced sexual harassment at work. The Government also didn't accept the recommendation that the Sex Discrimination Commissioner should have an own-motion power to conduct investigations and audits into sectors or workplaces.

Clearly the justice system is not responding effectively to sexual harassment and violence. In Australia, **only one in six women** who said they experienced sexual violence reported it to the police, and very few of those reports have led to a conviction. Most offenders effectively enjoy impunity. We need to do better than this. We need to rethink our justice systems for sexual harassment, sexual violence, and domestic violence to hold offenders to account better.

The complacency towards gender equality in Australia and the Asia-Pacific region needs to stop.

We need leadership from governments to address the gaps in the legal system that perpetuate inequality. All funding and policy decisions need to be assessed for their impact on women and men, and their ability to advance, or impede equality. Australia pioneered the idea of ensuring that all government policies, programs and spending explicitly advance gender equality. In 1984, the Australian Government introduced both the world's first Sex Discrimination Act and Women's Budget Statement.

The National Foundation for Australian Women (NFAW) has been producing a gender lens on the Budget report to address this gap every year since 2014. It is an important task, but it would be much more effective if the Government itself performed this function with the necessary robustness, in advance of making policy and spending decisions. Perhaps then Australia's Global Gender Index might stop its free-fall.

In 2018, The McKinsey Global Institute estimated that advancing women's equality in the countries of the Asia Pacific could add $4.5 trillion to the region's annual GDP in 2025, a 12 per cent increase over the business-as-usual trajectory. Instead, the pandemic has wreaked havoc and the by-products of economic shock and its impact on insecure employment are impacting women across the region particularly hard. Women are over-represented in industries most affected by the virus. Caring roles have increased. Women are most of the long-term unemployed, sole parents, and casual employees.

In response to the COVID-19 pandemic and economic crisis, governments have approved billions of dollars of fiscal and monetary support. Society including the legal and financial professions, need to take measures and hold governments to account when it comes to gender equality if we are to achieve the significant boost to growth and social justice in the region to which we all aspire.

[1] https://www.capitalmonitor.com.au/Display.aspx?TempLock=505h6GhzIm0%2foDumarDW9qYlpCBGj0SGVbHWJHE7kL4%3d&DocFrom=AdvancedSearch

Respect at work, safe workplaces remain far from reach for Australian women

James Dawson

LexisNexis Capital Monitor

Amid headlines listing COVID numbers and quarantine mishandling incidents across the states, Australia attracted global attention earlier this year with stories emerging from Parliament of detailed sexual harassment, assault, inappropriate behaviour, bullying, and unequal treatment of women dedicated to careers in politics. This was hardly a revelation for women in politics, or in any profession, yet vastly uncomfortable for the Australian Government as allegations of who knew what and when, as well as what was done about it, still fester. Making matters worse, the ongoing problem of workplace sexual harassment was already the subject of extensive research and advocacy by the Australian Human Rights Commission.

On 5 March 2020, Sex Discrimination Commissioner Kate Jenkins published the **Respect@Work report**, which made 55 recommendations for reform to the Morrison Government. In her foreword to the report, Commissioner Jenkins noted that Australia had once been at the forefront of global efforts to tackle workplace sexual harassment. In the early 1970s, women's organisations began to demand legal and social recognition of sex discrimination. After ratifying the International Labour

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Organization's Discrimination (Employment and Occupation) Convention in 1973 and the UN Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW') in 1983, the Australian Government introduced the Sex Discrimination Act 1984, outlawing sexual harassment at work. Over 35 years since then, the Commissioner said that progress has been "disappointingly slow," with Australia now lagging behind other countries.

From 2003 to 2018, the Australian Human Rights Commission conducted four national surveys on sexual harassment. The most recent survey in 2018 indicated that sexual harassment in Australian workplaces remained "widespread and pervasive." One in three people reported having experienced sexual harassment in the previous five years, including 39 per cent of women and 26 per cent of men.

Recent developments have highlighted just how prevalent sexual harassment is in the confines of Federal Parliament. The nature of the Parliament as a workplace makes junior staff especially vulnerable to sexual harassment and bullying, but can also place powerful perpetrators beyond the reach of direct accountability. The Sex Discrimination Act was designed to cover relationships between employers and employees. This creates difficulty where working relationships are not so clear-cut. Politicians are technically neither employers nor employees, therefore are difficult to directly hold accountable in the face of a complaint. Political offices are also intensely hierarchical with the Member, and the Chief of Staff, exercising immense power over junior staff. Under the ***Members of Parliament (Staff) Act 1984*** (the MOPS Act), staff are employed at the pleasure of individual Members and can be dismissed any time, without explanation.

If staff experience harassment or assault, the question remains, who can they complain to without fear of retribution? MOPS Act employees can raise issues with the Minister for Finance. This would not, however, prevent them from being immediately sacked by the Member who employs them. Furthermore, they may be framed as a political risk, putting their hoped-for career in politics in jeopardy. Even if findings of fault were made against an MP or a Senator, there is no clear-cut path for their removal from the Parliament short of a successful criminal prosecution. Asked in Question Time whether he might 'sack' MPs who have allegedly violated ministerial or parliamentary codes of conduct, the Prime Minister Scott Morrison has repeatedly pointed out that Members of Parliament are chosen by their electorates, and that it is not his place to fire them.

The Morrison Government's treatment of Christine Holgate in her role as Australia Post CEO in 2020 has also been characterised as gendered mistreatment of a senior employee. Controversy arose when it was revealed that Ms Holgate had authorised the purchase of four Cartier watches for senior executives who had secured a deal with three major banks in 2019. The same day the news broke (22 October 2020), facing repeated **questions** from Labor about "the Liberal-appointed Australia Post board, which spent $12,000 of taxpayers' money on Cartier watches", the Prime Minister **said** that Ms Holgate "should stand aside immediately" and that, "if she doesn't wish to do that, she can go." In her **evidence** to the Environment and Communications References Committee's inquiry into Australia Post, Ms Holgate alleged that Mr Di Bartolomeo had illegally stood her down at the public direction of the Prime Minister, making her leadership at Australia Post untenable and threatening her mental health. "So do I believe it's partially a gender issue? You're absolutely right I do," Ms Holgate said at

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the inquiry's hearings. "But do I believe the real problem here is bullying and harassment and abuse of power? You're absolutely right I do."

The Government's conduct in the Christine Holgate scandal characterises a phenomenon of senior women losing their jobs in circumstances where their male peers emerge unscathed, with notable parallels in Parliament. In the 'SportsRorts' affair in 2019, the Government was found to have preferentially awarded sporting grants to electorates held by the Coalition, and to marginal Labor electorates that the Coalition hoped to turn at the 2019 election. Then-Sports Minister Bridget McKenzie was strongly implicated but was believed to have acted at the direction of the Prime Minister's Office. Yet it was Senator McKenzie who took the fall; she was dropped from the Ministry within days of the revelations coming to public view. In contrast, several of her male colleagues have fared rather better in the face of recent scandals.

For example, Energy Minister Angus Taylor has been involved in no-tender sale of water to the Federal Government in 2017, while holding the position of director of a Cayman Island company shortly before he joined Parliament. A company, Jam Land, in which Mr Taylor has a shareholding, has been implicated in illegal clearing of native grasslands. Finally, it was Minister Taylor's office that was alleged to have doctored a document regarding Sydney Lord Mayor Clover Moore's travel expenses. Mr Taylor remains a senior Cabinet Minister.

Another example involves Employment Minister Stuart Robert who was forced to return a Rolex watch valued at $50,000 in 2016 given to him by a Chinese billionaire - a watch ten times the value of the Cartier watches at issue in the case of Australia Post. In 2018, he was forced to repay the Commonwealth $38,000 for excessive home internet bills. Mr Robert, a close friend and ally of the Prime Minister, seems not to have taken any hit to his career because of these scandals, progressing rapidly through ever more senior ministerial roles.

After some delay, the Government appears to be acting on sexual harassment. On 8 April 2021, the PM joined Minister for Women Marise Payne and Attorney-General Michaelia Cash to announce the Government's response to the AHRC's Respect@Work report, more than a year after the report had been published. The Government has agreed to (in full, in-principle, or in-part) or noted all 55 recommendations. Mr Morrison said that sexual harassment was "not only immoral and despicable and even criminal, it denies Australians, especially women, their personal security and their economic security by not being safe at work". Attorney-General Cash said sexual harassment was "unacceptable in any context – whether in the workplace or elsewhere", and that building respectful relationships would be a key focus for the Government in responding to the report.

Meanwhile, the Prime Minister has also promised to reform the Sex Discrimination Act to make Members of Parliament, judges and public servants accountable for workplace harassment. It's far from clear, however, whether he would support the establishment of an entity with the power to directly remove Members of Parliament and thereby force by-elections.

Something amiss in the Sultanate of Brunei Darussalam: reflections on diversity, inclusion, and the rule of law

Ann Black

Associate Professor of Law, at the TC Beirne School of Law, the University of Queensland

It is easy to assume that in a peaceful, affluent nation with well-functioning courts, a common law tradition and gender parity in education and employment, that the rule of law would not be an issue. Brunei Darussalam, a small Sultanate situated on the island of Borneo is one of the wealthiest states in Asia, with a GDP per capita PPP of US$71,809.30.[1] Its well-educated population enjoys one of the highest standards of living in the region. Yet, a review of law and governance reveals a range of concerns.

The first is its citizens are disenfranchised. Brunei is not a democracy. The members of its Legislative Council are appointed by the Sultan and serve 'at his pleasure'. Sultan Bolkiah explained that 'When I see evidence of a genuine interest in politics on the part of the responsible majority of Bruneians, I will consider introducing elections and a legislature'.[2]

The second is that Brunei is in a state of emergency. The Emergency Proclamation was first issued in 1962 and has been re-issued every two years since, even though none of the constitutional pre-conditions for a state of emergency (such as of public danger, war, threats of war or external aggression)[3] exist.

[1] Trading Economics, 2019.

[2] Sultan Bolkiah Interview reported in Clark Neher and Ross Marley, Democracy and Development in Southeast Asia (Westview Press, 1995), 145.

[3] Constitution s83.

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This enables the Sultan to make laws by Emergency Orders that bypass any discussion or oversight. The controversial Syariah Penal Code Order (2013) which brought in Syariah offences with penalties not seen before in Asia (stoning for adultery and consensual same-sex intimacy, amputations for theft, and executions for apostasy) was by Emergency Order. The Sultan uses this emergency power to amend the Constitution. In 1992, an amendment affirmed, 'the remedy of judicial review is and shall not be available in Brunei Darussalam'. [4]

Thus, Brunei's Supreme Court does not have powers of judicial review nor can it interpret the Constitution. This means the constitutionality of any law, including the state of emergency proclamation, cannot be considered by the courts. Instead, any question 'involving, arising from, relating to, or in connection with, the meaning, interpretation, purpose, construction, ambit or effect of any of the provisions of this Constitution' [5] must be referred to the Sultan. [6]

The fourth rule of law concern is the absence of formal separation of powers. The judiciary is 'formally subordinate to the executive'.[7] Brunei's common law courts are administered by the Prime Minister's Office. The Sultan is the nation's Prime Minister and appoints the judges for Brunei's common law and religious (Syariah) courts. Amendments in 2004[8] to the Supreme Court Act Cap 5[9] granted the Sultan significant control over court proceedings:[10] to direct a case be heard in camera; [11] set the time and venue for proceedings;[12] and exempt 'any person' required to attend the Supreme Court from complying;[13] and if a party 'might' make a 'direct or indirect reference' about the Sultan, the trial must be 'held in camera.' [14]

Fifth, Brunei has extensive censorship laws.[15] Censorship is justified to shield Bruneians from negative information,[16] which means any negative coverage of the Sultan, government, Islam, the national ideology of MIB[17] or the royal family is not permitted. Therefore, organisations such as Freedom House categorize Brunei as 'not free' along with Cambodia and North Korea.[18] In 2020, Brunei was ranked 153rd on the World Press Freedom Index.[19]

Although on many measures Brunei is a success story with its Sultan loved and respected by Bruneians, the rule of law is but one casualty of autocratic rule. Another is that minorities, including LGBT+ Bruneians and religious minorities, have restrictions on their freedoms. Restrictions for these minorities intensified

[4] Constitution s84 C

[5] Constitution s86 (1).

[6] Constitution s86 (2) & (3) allows the Sultan to set up an Interpretation Tribunal with members serving at his pleasure (s86 (7)).

[7] Joel Ng, 'Rule of Law as a Framework within the ASEAN Community' [2012] 5 J.E. Asia & Int'l L, 327, 335

[8] Also using Emergency Power

[9] Also replicated in the Intermediate and Subordinate Courts Acts

[10] See generally, Ann Black 'Judicial Independence in Brunei Darussalam' in HP Lee & Marilyn Pittard (eds) Asia Pacific Judiciaries: Independence, Impartiality and Integrity(Cambridge University Press, 2018), 57s

[11] Supreme Court Act Cap 5 s15 (5).

[12] Supreme Court Act Cap 5 s15 (6).

[13] Constitution s34 (1)

[14] Constitution

[15] Sedition Act Cap 24; Internal Security Act Cap 133; Undesirable Publications Act Cap 25; Newspaper Act Cap 105; Syariah Penal Code Order (2013).

[16] Yazdi Yahya, 'Censorship is Still Important' The Brunei Times, 19 November 2007

[17] Melayu Islam Beraja translates as Malay Islam Monarchy.

[18] www.freedomhouse.org.

[19] https://rsf.org/en/ranking

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under newly introduced offences in Syariah Penal Code Order which has jurisdiction over Muslims and non-Muslims.

For LGBT+ Bruneians, consensual same-sex conduct is an offence under both the common law Penal Code Cap 22 (s377)[20] and the Islamic law's Syariah Penal Code Order (ss82-85 for male intimacy and s92 for female intimacy). Although in 2019 the Sultan announced a moratorium on the death penalty including that of stoning for proven same-sex conduct, the law was not repealed or amended. It has left LGBT+ Bruneians stigmatised and marginalised.

Despite this, women in Brunei have benefitted from a range of inclusive policies with parity in education, training, healthcare, employment, and ownership of assets. Women comprise 60-70 per cent of university graduates, including in law,[21] and make up 50 per cent of the civil service. Yet, they are significantly under-represented in Brunei's Executive, Religious and Legislative Councils. In addition, Muslim women face a range of discriminatory laws, including the need for permission of a wali (male guardian) to marry,[22] inequality in divorce, guardianship of children, inheritance, and testimony in Syariah Courts.

There is no doubt that the Sultan cares for his subjects and prioritises their welfare. Brunei's Attorney-General reassures he will 'always have the best interests of his subjects at heart'.[23] However, his paternalistic and autocratic policies which curtail all public debate, exclude judicial and constitutional review, limit diversity in religious practice and sexual orientation, and deny all Bruneians a vote and thus a voice in legislation that directly impacts their lives, can never be in the best interests of all his subjects.

[20] Voluntary sexual intercourse against the order of nature with a maximum penalty of 30 years for a first offence.

[21] CEDAW/C/SR 1259.

[22] Islamic Family Law Order 2000. This is not a Quranic requirement.

[23] Attorney-General Hayati, Speech for the Opening of the Legal Year, 2016.

Why quotas matter

Grace Stanhope

LexisNexis Capital Monitor

Jenna Allen

LexisNexis Capital Monitor

As of today, only **26.4 per cent** of the Australian Liberal Party and **47.9 per cent** of the Australian Labor Party representatives in Federal Parliament are women. This is almost a decade after the Australian Government **committed $320 million in 2012** to support a 10-year initiative to 'empower women and to promote gender equality in the Pacific' region.

Beyond merely slow progress in the region with the world's lowest proportion of women parliamentarians, however, is the troubling fact that the most recent calls for systemic changes to improve gender equality across Australia were once again brought into the mainstream by reports of disturbing behaviour. This included, but is not limited to, the alleged sexual assault of a former female parliamentary staffer inside of Parliament House itself. In response to sustained pressure, Prime Minister Scott Morrison publicly broke with many in his own political party, at a **press conference** held at Parliament House in March this year, by asserting his willingness to consider the implementation of quotas as a means to increase the level of female representation among Liberal Party members. Stating that he "doesn't hold the same reservations that others do," Prime Minister Morrison claimed that other Liberals are likewise "adopting a similar view" because they [the Liberal Party] had "tried it the other way and it isn't getting us the results we would like".

As COVID-19 leads to the examination and disruption of many social conventions, it is also an opportune moment to reflect on the history of electoral quotas as a policy concept to galvanise gender equality and strengthen the rule of law in Australia.

Although a small number of countries had already begun to establish various provisions as early as the 1930s, the largest expansion of electoral quotas, as a way to increase female representation in political office, occurred in the 1990s with the sweeping global political upheaval and reform that followed the end of the Cold War. By 1995, the United Nations' Fourth World Conference on Women produced the unanimously signed Beijing Declaration and Platform for Action that is often recognised as the catalyst for the global spread of quota policies aiming to ensure women's full participation in power structures, leadership and decision-making. Electoral quotas now exist in more than one hundred countries around the world, highlighting that the trend toward adopting such systems (while non-linear and slower than would be preferred by many) has accelerated over a relatively short period of time.

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In contrast, while Australia became the first nation in the world to allow women both to vote and stand for Federal Parliament in 1902, the country saw progress stagnate with no representation of women in Parliament until 1943. It wasn't until the disruptive demands and new social context of World War II that the lag and informal barriers to women's participation in politics began to change.

It took until 1981 for the Australian Labor Party to recognise a lack of gender diversity within its ranks and set a national precedent by establishing a quota requiring women to hold 25 per cent of all internal positions. The Liberal Party, in opposition to its more recent reputation, has historically had a record of robust success in supporting women's representation in Parliament. Evidence of this can be seen in the fact that the Liberal Party launched the only six female senators between 1943 and 1974, efforts that were buoyed by support from the Australian Women's National League and Robert Menzies. The move of the Labor Party to adopt quotas ushered Australia into what is known as a 'party level' quota system whereby it is dependent on a given political partly to adopt, design and implement the gender quotas that they select themselves. This means that Australia has continued to buck the global trend toward legislated quotas (i.e. quota adoption by law that is bind for all parties) that began in Argentina in 1991).

Entrenched opposition to legislated electoral quotas in Australia remains, and is often put forward as a protest based on needing to protect a 'meritocracy' in Parliament. The argument being that electoral quotas stand contra to such principles. Although a complex confluence of variables are at play, perception of the 'post-feminist' status of Australian politics — the notion that men and women have achieved equality — (whether genuine or feigned) clearly plays a part in ongoing acceptance of this meritocracy as a politically acceptable narrative in certain circles. Indeed, the current Liberal-National Coalition Government parties do not formally support gender quotas in Parliament and pressure on the Labor Party to increase their quota to 50 per cent has even seen members express views that include the need to preserve merit.

When examined in the context of global momentum and national history, however, the effectiveness of such argument to stymie support for electoral quotas is peculiar. Especially given that it is at odds with policies of affirmative action that have been a central part of Australia's workforce participation and gender equality legislative framework since the first equal opportunity legislation was passed in 1986. **Professor Mona Lena Krook examines** how and why campaigns to adopt quota systems succeed or fail, stating that adoption of quotas occurs as a result of advocacy mobilisation, calculations by political elites, when they 'mesh' with notions of equality and representation or when they spread through global norms.

Professor Krook's work makes the path forward no less complicated but clear. If, as Krook says, "Both national and international/ transnational actors justify quota adoption on normative terms of justice but also on strategic motivations or populist purposes," then pressure to make it strategically imperative for Australian politicians to adopt quotas must be increased. There are many ways in which this is currently attempted. However, the recent shift by Prime Minister Scott Morrison highlights one of the perpetual barriers to accomplishing such pressure. Namely that, among those who subscribe to the narrative of the meritocracy, talk of quotas usually only occurs in reaction to whatever scandal or political problem brings the discussion of representational diversity into the public conversation.

While this is the same for every topic that moves in and out of the mainstream conversation, it has a particularly disastrous impact on attempts to topple systems of entrenched and engrained inequality. In the Australian context this influences public understanding and perception of quotas, often portraying a false dichotomy between adopting quotas and merit. Soundbites by politicians reacting to the political context of the day bolster a shallow conversation oriented to immediate politicking, rather than toward discussion about political justice and strengthening the rule of law through accurate representation of the populace in democratic institutions.

Ultimately, the soul of the conversation around electoral quotas and gender equality starts with an agreement on three things. First, that representation in democratic institutions matter and gender equality should be the status quo. Second, that access to, and full participation in power structures, leadership and decision-making has not historically existed equally between women and men. Third, that democratic institutions hold the power and responsibility to increase legislative support for social equality through policy. Our answers to each of these statements signal something significant about our views of legitimate governance and the rule of law and should lead each of us to demand a robust, sustained and non-reactionary public discussion about gender quotas as imperative in the spirit of improving the health of Australia as a liberal democracy. After all, as Prime Minister Morrison has come to realise the 'other way' isn't working.

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Screen reading the law

Accessibility and Lexis Advance®

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In Australia, it is estimated that there are over 575,000 people who are blind and vision-impaired, including more than 70 per cent of people over the age of 65.[1] Despite blindness and vision impairment being a fact of life for many across the legal profession, accessibility in legal research has too often been a secondary consideration for product designers.

Accessibility, particularly the compatibility of legal research websites with screen readers, is a central focus in the design of LexisNexis platforms and services. In the past, understanding between blind or vision impaired users and the developers of such platforms was incomplete, making a fully-accessible product impossible – but this is changing!

The importance of accessibility

As LexisNexis' primary research offering, Lexis Advance is a fixture in the suite of research tools available to lawyers, barristers, academics, and law students. In many firms, budget constraints mean that Lexis Advance is the only research tool available. In academia, it is a pivotal tool for research delivering one of the widest selection of cases, legislation and commentary materials available on the market.

If a legal research platform is incompatible with screen readers, then a significant proportion of users will have limited or, in the worst case, no access to the valuable legal information on that platform. Not only does this run counter to the rule of law, it has real world implications for individual users. For example, blind or vision-impaired students may struggle to meet the research requirements of their law degrees, ultimately disqualifying themselves from the legal profession entirely.

Computer use and legal research should not be a barrier to entry for blind or vision-impaired users to practise or work in

[1] https://www.vision2020australia.org.au/resources/a-snapshot-of-blindness-and-low-vision-services-in-australia

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the legal field. Blind or vision-impaired lawyers, paralegals and legal support staff have worked in all areas of the profession for many years. Blind or vision-impaired academics and students have taught and studied at all of levels of academia. It is the job of platform developers and product managers to make legal information accessible to all, with no exceptions.

What are screen readers

Screen readers are a form of assistive technology that renders text and image as speech or braille output. In respect to a web-based application or site, the screen reader identifies text, items and controls. The screen reading program translates the written text displayed on the screen, including other screen information like menu options and controls, via non-visual means such as text-to-speech, sound icons or a braille device. Users may then navigate the site using a keyboard, refreshable braille display or touch screen.

Screen readers can access a website if developers have adequately labelled each item and control with respect to what the control is and what it does. On a legal research platform, a control may allow a user to access a case, sort or filter search results, and download, print and save documents. If a label is improperly labelled or nested incorrectly, the control may be difficult to find or is announced insufficiently to allow the user to understand what it does and make use of it. A common issue is where a screen reader may announce a function without specifying its control, making it difficult for the blind or vision-impaired user to place focus on that control and activate it to complete their task.

Improving accessibility on Lexis Advance

Lexis Advance has requirements to comply with Web Content Accessibility Guidelines (WCAG). The WCAG are a set of recommendations for making web content more accessible, especially for people with disabilities. Regular testing is performed at each release to ensure that our current accessibility features continue to meet WCAG requirements. Periodic auditing is conducted to determine the platform's level of compliance in relation to similar products in the market.

Working with global user experience teams and user groups, LexisNexis is currently closing any accessibility gaps found during our ongoing audits of the platform in 2021. The goal is not only to close these gaps, but also to remove any usability obstacles for screen readers and raise the importance of going above and beyond the WCAG standards.

Areas of focus include:

- Address webpage hierarchy to ensure menu options and controls are easily accessible.
- Update headings and labels to maximise clarity and meaning.
- Improve use and coverage of ARIA labels and attributes.[2]
- Improve announcements to make searching and accessing documents easier, such as announcing catchwords and non-linking citations for cases' search results.
- Address colour contrast and style to improve readability of text for vision-impaired users.

[2] ARIA refers to attributes used to add labels and descriptions to HTML elements to improve the user experience for vision-impaired users using assistive technology. ARIA refers to the Web Accessibility Initiative - Accessible Rich Internet Applications (WAI-ARIA), which is a technical specification published by the World Wide Web Consortium. Where native HTML is insufficient to resolve accessibility issues, ARIA is used to bridge those gaps

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