

17 June 2020

Ms Libby Fulham
Executive Director
Legal Practice Board
Level 6, 111 St Georges Terrace
PERTH WA 6000

By email to: lfulham@lpbwa.com

Dear Ms Fulham

NATIONAL COLLECTION OF ETHNIC AND CULTURAL DIVERSITY DATA

I refer to the Memorandum from the Law Council of Australia dated 1 May 2019 recommending that Constituent Bodies include three uniform questions on practising compulsory certificate renewal forms (**Recommendation**), and your response by letter dated 13 September 2019 (**copies of which are attached for your ease of reference**).

In October 2019, the Law Council of Australia repeated its request to the Constituent Bodies for feedback on the Recommendation.

We understand that, to date, three Constituent Bodies have committed to including the three questions in the manner and form proposed. They are the Queensland Law Society, the Law Institute of Victoria, and the Victorian Bar. In addition, we understand that the Queensland Bar Association, the South Australian Law Society, and the South Australian Bar Association has included a simplified form of the proposed questions on its practicing certificate application form.

On behalf of the Law Society of Western Australia, I write to again indicate our support and endorsement for the Recommendation. On behalf of our members, we would like to discuss with the Board the steps that can be taken so that the West Australian legal profession would be able to have this data captured in the practicing certificate renewal process effective from 1 July 2020.

We believe that asking the three questions proposed in the Recommendation is essential in capturing the baseline data of the cultural and linguistic diversity in the Western Australian legal profession. We believe that without this data, the West Australian profession would not be in a position to understand the magnitude of the issue it is facing, namely the degree to which the profession is culturally and linguistically diverse and the degree to which that diversity marries with the cultural and linguistic diversity in the West Australian community.

We believe that without the baseline data, we would be unable to develop any meaningful or effective solutions for addressing cultural and linguistic diversity initiatives.

We also believe that the under representation of culturally and linguistically diverse legal practitioners is profession wide and therefore the effectiveness of any initiatives will be

maximised if the data was collected using the nationally consistent method proposed by the Recommendation.

The Law Society of Western Australia is committed to a profession that is diverse and inclusive and one that reflects the diversity that exists in our communities. We believe that the impact of a diverse and inclusive profession not only uplifts the profession but also has a community and systemic impact on justice and access to justice.

We therefore look forward to working on this very important initiative with the Board and suggest meeting with you as soon as convenient so we may discuss how we can overcome any obstacles to the West Australian profession adopting the Recommendation.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'N' and 'H' followed by a long horizontal line.

Nicholas van Hattem
President

Memorandum

To: Directors
Presidents – Constituent Bodies
CEOs – Constituent Bodies
Chair – Equal Opportunity Committee

From: Jonathan Smithers, CEO

Date: 1 May 2019

National Collection of Ethnic and Cultural Diversity Data

Action Request

At their recent meeting on 23 March, the Law Council of Australia Directors agreed to recommend to Constituent Bodies the inclusion of three uniform questions on their practicing certificate renewal forms and/or membership renewal forms, in order to collect accurate data on the ethnic and cultural diversity of the legal profession.

Accordingly, the Law Council would be grateful if Constituent Bodies would amend their practicing certificate renewal forms and/or membership renewal forms to include the three uniform questions, outlined below, prior to the 2019/2020 renewal cycle.

Constituent Bodies are then asked to provide the de-identified data arising from those questions to the Law Council Secretariat by 30 November 2020 to be collated into a report.

It is acknowledged that those Constituent Bodies in Victoria and Western Australia will need to liaise with the Victorian Legal Services Board and the Legal Practice Board of Western Australia, respectively, in order to achieve these amendments and outcomes.

The National Collection of Ethnic and Cultural Diversity Data is an initiative begun and championed by the Law Council's Equal Opportunity Committee (**the Committee**). The aim is to support the work of Constituent Bodies by extending questions already asked in individual states and territories into a nationally consistent program. This will provide an accurate way to measure the current state of diversity across the legal profession and support future needs.

Key Issues

The three uniform questions are as follows:

1. *In which country were you born?*

- *Australia*
- *New Zealand*
- *UK*
- *Republic of Ireland*
- *China*
- *South Africa*
- *Malaysia*
- *Hong Kong*

Memorandum

- *India*
 - *Canada*
 - *Sri Lanka*
 - *Fiji*
 - *USA*
 - *Lebanon*
 - *Other*
 - *I'd rather not say.*
2. *What is your ancestry? Provide up to two ancestries only. Examples of 'Other' include Vietnamese, Lebanese.*
- *Australian*
 - *English*
 - *Irish*
 - *Scottish*
 - *Italian*
 - *Greek*
 - *Indian*
 - *Chinese*
 - *Aboriginal*
 - *Torres Strait Islander*
 - *Aboriginal and Torres Strait Islander*
 - *I'd rather not say*
 - *Other(s)*
3. *Are you of Aboriginal or Torres Strait Islander origin?*
- *Yes – Aboriginal*
 - *Yes – Torres Strait Islander*
 - *Yes – both Aboriginal and Torres Strait Islander*
 - *No*
 - *I'd rather not say.*

It is recommended that the questions include some opening commentary to explain to respondents why the question is being asked, and to encourage respondents to respond. A possible statement could read:

The following three questions are optional and confidential. They are designed to elicit data that is important for the legal profession to understand the background of its members which may then inform diversity and inclusion initiatives. The [relevant State/Territory body] will only share this information with the Law Council of Australia strictly on a de-identified basis.

Background

The collection of uniform data on ethnic and cultural diversity will allow the Australian legal profession to better understand the cultural and ethnic demography of the profession, and

Memorandum

identify the trends and needs of the profession with regard to promoting cultural diversity and inclusion.

Understanding the cultural and ethnic demography of the profession will assist the Law Council to develop appropriate policies and projects in order to promote greater diversity within the legal profession. This objective aligns with the following:

- The Strategic Pillar contained within the Law Council's 2015-2020 Strategic Plan, which is to promote, protect and defend the interests of the members of the Australian legal profession; and
- Recommendation 2.8 of the Law Council's Justice Project which states that the Law Council recognises and accepts responsibility for building on existing efforts to promote greater diversity within the legal profession, by seeking to increase its proportion of people who are culturally and linguistically diverse and Aboriginal and Torres Strait Islander.

The Law Council is committed to ensuring a diverse and inclusive profession which facilitates a positive experience for all members, and which thereby delivers quality services and justice. Diversity is crucial to the sustainability of the legal profession. Studies show that diversity in workplaces positively impacts factors such as performance, work quality, innovation, risk reduction and client satisfaction.

In 2016, the Australian Human Rights Commission's [Leading for Change: A blueprint for cultural diversity and inclusive leadership](#) report highlighted that:

About 28 per cent of [the Australian] population was born overseas, with another 20 per cent having an overseas-born parent. According to one estimate, 32 per cent of the Australian population have a non-Anglo-Celtic background. However, such cultural diversity is not proportionately represented within the senior leadership of our organisations.

In relation to the collection of data as a critical aspect of the blueprint, the following specific comments were made:

Gathering and reporting data on cultural diversity must accompany any leadership commitment to the issue. Doing so gives a baseline for measuring future progress. It also helps to focus minds within organisations. ... We understand that measuring cultural diversity is complex but this does not mean we should avoid doing so.

Cultural and ethnic diversity questions were included in the [2016 national census](#), and included questions such as: in which country was the person born; in which country was the person's mother/father born; and does the person speak a language other than English at home.

The [Diversity Council of Australia \(DCA\)](#) has stated that collecting and reporting on diversity and inclusion leadership metrics is essential in order to develop targets to create a culture of accountability for delivering on diversity and inclusion.

Memorandum

There are currently no nationwide statistics available to inform the Law Council or State or Territory bodies on the needs, trends or priorities of the legal profession with regard to promoting cultural diversity and inclusion.

There has been significant work done by some individual bodies in relation to this area, including but not limited to:

- In 2018 the New South Wales Bar Association for the first time asked four questions on their practicing certificate renewal form relating to cultural background and language.
- In 2015 the [Asian Australian Lawyers Association \(AALA\)](#) published the Cultural Diversity Report, which found that Asian Australians account for 3.1% of partners in law firms, 1.6% of barristers, and 0.8% of the judiciary.
- In 2017 Victoria Women Lawyers (VWL) [announced](#) its intentions to conduct a diversity survey. The VWL survey included questions relating to ethnic culture and background, places of birth of parents and grandparents, languages spoken, as well as other areas of diversity.
- In 2015 the Women Lawyers Association (WLA) of NSW published its [Career Intentions Survey 2013-2015](#) which included diversity questions such as country of birth and cultural background.
- In March 2018 the Victorian Bar published its [State of the Victorian Bar](#) survey. The survey found that of those surveyed:
 - 9% speak a language other than English at home;
 - 37% had at least one parent born overseas;
 - 15% were born overseas; and
 - 1.2% are of Aboriginal or Torres Strait Islander heritage.

Though much work has been conducted by individual bodies, a national approach to the collection of diversity data would be highly beneficial to the Australian legal profession. I urge you to support and implement this important initiative.

Contact

Please contact Dr Natasha Molt, Director of Policy, on 02 6246 3754 or at natasha.molt@lawcouncil.asn.au, in the first instance if you would like any further information.



Jonathan Smithers
CHIEF EXECUTIVE OFFICER

Private & Confidential

13 September 2019

Mr Jonathan Smithers
CEO
Law Council of Australia
GPO Box 1989
CANBERRA ACT 2601

By email: mail@lawcouncil.asn.au

Dear Mr Smithers

National Collection of Ethnic and Cultural Diversity Data

I refer to your memorandum dated 1 May 2019 that was forwarded to the Legal Practice Board (**Board**) by the Law Society of Western Australia.

This matter was considered by the Board at a meeting of its Professional Affairs Committee held on Thursday, 12 September 2019.

The Committee formed the view that, notwithstanding the laudable aims of the Law Council, it is not appropriate to use practising certificate renewals as a vehicle to collect the information sought.

It is of note, however that in its practising certificate application form the Board asks an optional question inviting practitioners to advise if the practitioner identifies as Aboriginal or Torres Strait Islander.

Otherwise, it is suggested that if the Law Council wishes to conduct a voluntary survey of Western Australian practitioners, the Law Society of WA may be the appropriate partner for such a venture.

Should you wish to discuss this matter, please contact me on (08) 6211 3600.

Yours sincerely



Libby Fulham
Executive Director
Legal Practice Board

cc: Law Society of WA

2 May 2019

Libby Fulham
Executive Director
Legal Practice Board of Western Australia
Level 6, 111 St Georges Terrace
PERTH WA 6000

Dear Libby

NATIONAL COLLECTION OF ETHNIC AND CULTURAL DIVERSITY DATA

The National Collection of Ethnic and Cultural Diversity Data is an initiative begun and championed by the Law Council of Australia's (LCA) Equal Opportunity Committee. The aim is to support the work of Constituent Bodies by extending questions already asked in individual states and territories into a nationally consistent program. This will provide an accurate way to measure the current state of diversity across the legal profession and support future needs.

At their recent meeting on 23 March, the LCA Directors agreed to recommend the inclusion of three uniform questions on practicing certificate renewal forms and/or membership renewal forms, in order to collect accurate data on the ethnic and cultural diversity of the legal profession

Accordingly, the LCA has written to the Law Society of Western Australia (attached is a copy of the memo from the LCA Chief Executive Officer dated 1 May 2019) asking the Law Society of Western Australia to liaise with the Legal Practice Board of Western Australia (LPBWA) to achieve these amendments and outcomes.

As the Law Society does not easily have the ability to collect this information from all members of the profession it would be appreciated if you could give the LCA's request to amend the practicing certificate renewal forms consideration and advise me in due course if the LPBWA is able to assist.

Please contact Dr Natasha Molt, Director of Policy, on (02) 6246 3754 or at natasha.molt@lawcouncil.asn.au, in the first instance if you would like any further information.

Yours sincerely



David Price
Chief Executive Officer

cc: Natasha Molt, Director of Policy, Law Council of Australia

Level 4, 160 St Georges Terrace Perth WA 6000, DX 173 Perth

Telephone: (08) 9324 8600 Facsimile: (08) 9324 8699

Email: info@lawsocietywa.asn.au Website: www.lawsocietywa.asn.au

Please address all correspondence to The Law Society of Western Australia PO Box Z5345, St Georges Terrace Perth WA 6831