

WORKING GROUP REPORT: Gender Identity and Belonging in the Legal Sector





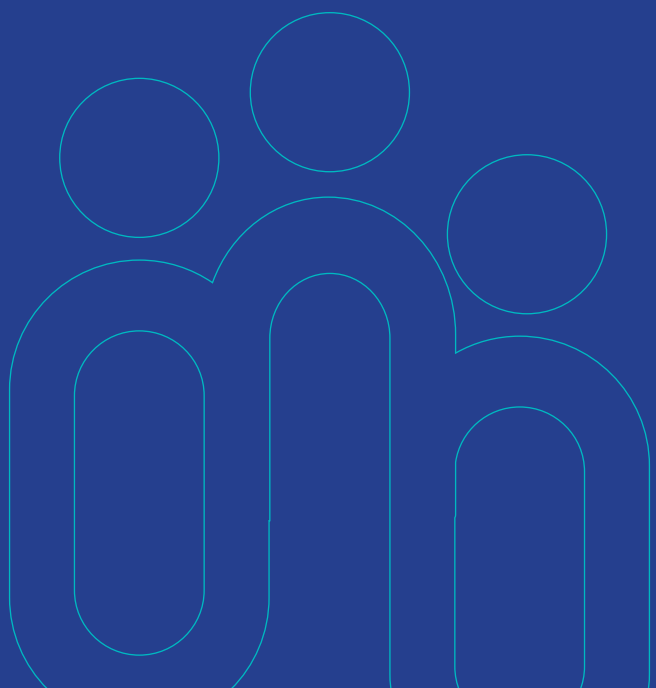
CONTEXT

A key aspect of the South African General Counsel for Diversity and Inclusion (SA GC for D&I) initiative is the creation of working groups to facilitate comprehensive and multi-stakeholder conversations around critical themes linked to diversity, equity and inclusion (DEI) within the South African legal fraternity.

These working groups discuss topics proposed and voted on by members of and partners to the initiative. Each working group is tasked with using the discussions to create an output intended as a public-good resource for those wanting to enhance DEI. This document is such an output and we encourage readers to share it with others in the South African legal fraternity who may benefit from its content.

This particular document is the fruit of the collaborative efforts of the Gender Identity and Belonging in the Legal Sector working group, which started in late 2023 and concluded its work in early 2024. The SA GC for D&I gratefully acknowledges the efforts of all of those who took part in these working group discussions and thanks their organisations for allowing them the time to do so.

The discussions within the working groups adhere to the Chatham House Rule, ensuring the anonymity of individual contributors to the dialogue. For further information or to become part of the SA GC for D&I and its current or future working groups, [visit www.sagcdi.co.za](http://www.sagcdi.co.za).



BEYOND STEREOTYPES: UNDERSTANDING GENDER IDENTITY IN SOUTH AFRICA'S LEGAL PROFESSION

As part of the SA GC for D&I initiative, a working group on Gender Identity and Belonging in the Legal Sector was established to encourage and promote a broader, more detailed discussion on gender diversity, equity and inclusion (DEI) in the South African legal fraternity. These discussions, involving a diverse mix of legal professionals, have been valuable for participants and their organisations, and the working group has decided to consolidate and share some of the key topics discussed for a wider audience in the hope that they encourage further discussion, engagement and impact.

LANGUAGE AND DEFINITIONS

Early in the working group discussions, we identified a key barrier to any discussions about gender in the legal sector: **language usage**. Definitions and terminology associated with sexual and gender identities are increasingly diverse, complex and often technical. And they are continually evolving. As such, our first few working group sessions were primarily centred around how to best define and use gender-related terms while being fully cognisant of the fact that definitions can still change over time. We were also eager to include gender identity in our discussions without confusing or diminishing the importance of more “traditional” gender discussions that impact the legal fraternity – for example, female representation at senior leadership levels.

DID YOU KNOW?

In November 2023, the first queer-led law clinic was officially recognised in South Africa by the Legal Practice Council in Gauteng.¹

The key terms that we needed to define included **“gender identity”**, which refers to an individual’s sense of themselves, which may not necessarily match one’s sex at birth. Gender identities are varied and multifaceted, and include categories such as man, woman, transgender and gender non-binary, among others. Another important term for our discussions was **“intersectionality”**. This refers to the way in which people identify with multiple groups at the same time, which can sometimes lead to unique forms of lived experiences and discrimination. For example, a person may be both black and queer, which could result in vastly different lived experiences from someone who is white and queer – even though both share a key facet of identity. Thus, any discussions relating to gender diversity should also consider other aspects of identity, and we realised the importance of being cognisant that many gender minorities² may face differential treatment and injustice based on their intersectional profiles.

The need to clarify the above-mentioned definitions becomes especially evident when trying to understand the barriers to gender diversity within workplaces. Due to the common conflation between sex and gender identity, as well as ongoing gender inequity, the male-female dichotomy still typically dominates gender conversations. Discussions about women’s rights have a long history and remain both integral and complementary to the broader discussion on gender diversity. These discussions include topics like parental leave and gender pay gaps. Equally, there is increasingly a need for a more inclusive dialogue including those who do not identify strictly as male or female.

BARRIERS TO GENDER DIVERSITY

We see definitions and language as a key early step in facilitating gender conversations. However, theoretical discussions of gender diversity will only hold practical value if they lead to direct improvements in gender dynamics in workplaces. Below are some of the practical challenges faced by women and gender minorities in the South African legal sector, which were a central concern of this working group.

The working group participants acknowledged that, while gender diversity remains a challenge for most sectors, it represents an especially complex set of legal sector-specific discussions, perhaps best illuminated through some real-life examples.

For instance, the language used in legal contracts can sometimes still be masculine and legal definitions of gender remain rigid, often not accommodating non-binary identities. For example, within legal employment contracts and policies, terms relating to parental leave continue to be dominated by gender dichotomy. This can limit equity and may restrict the space available for non-traditional gender identities. Although this issue affects all sectors, the legal profession may be in a position to influence the scope of certain legislation and policies, given the nature of its work.

DID YOU KNOW?

While more than half of the LLB graduates in South Africa are women (57%), women remain underrepresented in the legal sector. According to the latest industry statistics report published by the Law Society of South Africa in 2018, **women comprised only 36% of the permanent judges, 42% of practising attorneys and 42% of the registered advocates** on the General Council of the Bar of South Africa.¹

Client engagement and networking events in the legal profession have also been highlighted as potentially exhibiting an – often unintended – gender bias. In our working group, we heard consistently that – although not universal in the legal fraternity – many events and networking opportunities continue to be based around stereotypically “male-interest” activities, happen after work hours, or involve engagements centred around sports and alcohol. All of these may exclude – often unintentionally – women and other gender minorities, among others. Therefore, we strongly encourage organisations to be cognisant of the timing, format and activity of corporate events to ensure they are inclusive.

Physical workplace environments in some companies may also reflect conservative attitudes towards gender. The presence or not of gender-neutral facilities and rules (written or unwritten) about gender-diverse attire are topics commonly discussed in this vein.

Despite these challenges, it is also important to acknowledge that many organisations are actively engaging in this discussion and many have made significant efforts to encourage gender equity and include gender diversity in their organisations. Their actions should be applauded and encouraged. Additionally, we note that many of these discussions – notably around gender identity – are new for many people; therefore, the focus should be on awareness, education and sharing rather than criticism, which may alienate well-meaning individuals and make progress in these discussions more difficult.

STEPS FORWARD

Having examined the gender diversity challenges faced by the South African legal sector, our working group sessions turned towards potential solutions. It was noted that the path to fostering a sense of belonging for all within the legal fraternity often starts with relatively small habits and actions at the organisation level. Initially, changes do not necessarily have to be systemic: seemingly minor modifications to internal processes, communication styles or office spaces can significantly enhance a feeling of inclusivity and belonging. For example, senior employees' transparent and sincere engagement in conversations about gender identity can foster a welcoming environment for gender minorities and set the tone for the rest of the employee group.

After extensive consultations and internal discussions, the working group came up with a list of "small" actions that could potentially be worth considering for organisations wanting to improve gender diversity or nurture a sense of belonging for gender minorities in the organisation. These are:

- Embracing an expanded definition of appropriate and formal attire for the legal workplace
- Launching language campaigns that, for example, share definitions or create awareness around preferred pronouns
- Providing education and training programmes, which can be effective tools to raise awareness and understanding
- Considering developing a diversity-focused calendar that sets up events and learning opportunities around calendar fixtures like Pride Month and Womxn's Month, for example

DID YOU KNOW?

A qualitative study conducted by a professor at the University of Cape Town on 27 women attorneys across various racial groups found that **motherhood negatively affected their legal careers.** This is because **motherhood created a conflict between professional and maternal roles due to the competitive culture of law firms.** The interviewed mothers faced career disadvantages in the legal sector, such as **difficulty rebuilding their practice after maternity leave, receiving less impactful work, and a stunted path to partnership.**¹

At a more systemic level, sooner or later the legal fraternity is going to have to collaborate to discuss gender identity in more depth and to identify places where it may make sense to consider redefining definitions of gender and challenging rigid norms. These efforts may also work towards influencing legal frameworks and internal policies that impact gender diversity, ensuring they cater to all. Critically, it must be noted that such collaborations should themselves be inclusive, ensuring that all relevant voices are part of the dialogues, discussions and decisions.

CONCLUSION

Despite all of the extensive dialogues and insightful conversations conducted internally among the working group participants, everyone in the working group felt that more dialogue on gender diversity within the South African legal sector should be encouraged. In this regard, we hope that this has sparked thoughts and conversations in organisations. We invite further discourse on this important issue and would deeply value your perspectives and experiences. Please engage with us in the SA GC for D&I initiative on this topic and help us to create a more diverse and inclusive future for the legal fraternity.