Advancing women in medical leadership

To the Editor: Teede's inspirational, forward-looking review[1] should also prompt scrutiny of the philosophical constructs underpinning gender equity.

"Unconscious bias" is raised four times but does not appear to be supported by referencing, apart from a qualitative survey which reports the perception of unconscious bias.[1] Some critics have argued[2–4] that implicit (unconscious) bias as a factor in creating gender or other types of societal inequity is not proven, and that the Implicit Association Test, which has been used to support the concept of implicit bias, does not meet criteria for reliability and validity.[2,3]

Substantive equality allows different groups to be treated differently to enable members of these groups to enjoy equal human rights. It is the philosophical justification for the legal instrument of "special measures", as described in the Australian Human Rights Commission guidelines on special measures under the *Sex Discrimination Act 1984* (Cth).[4] Special measures allow for "lawful" discrimination, without which, for example, leadership programs for women and quotas would be unlawful under anti-discrimination legislation. However, there is no strict legal definition of special measures and the guidelines do not provide a definitive legal clarification of the special measures allowed under the Sex Discrimination Act.[5]

This leads to the question of how individuals, institutions and the legal system can determine if substantive equality has been achieved and whether this has led to gender equity.

Although statistics are frequently used to support either the attainment of gender equity, as they are in Teede's article,[1] or the lack of it, the concept of "disparate impact" needs to be considered. This describes the situation where groups which have protection under the law (eg, for race or gender) experience disadvantage despite all the rules being formally neutral. The United States Supreme Court[6] found in 2015 that a "disparate-impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity". That is, a statistical variation alone cannot prove discrimination. Such findings are also likely to partly shape debate in Australia.

In summary, justifying otherwise discriminatory means of redress using the unjustifiably blunt dichotomous test of "gender" creates untenable rankings of individual disadvantage.[7] How does this deal with the situation where, for example, a man wishes to make career sacrifices for childrearing. Should this situation be included in special measures?

Michael Keane

Swinburne University of Technology, Melbourne, VIC.

mkeane@swin.edu.au

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