

Final Directions Paper

The Law Society of Western Australia's response
to the Women Lawyers of Western Australia's
20th Anniversary Review of the 1994 Chief Justice's
Gender Bias Taskforce Review

THE **ESSENTIAL** MEMBERSHIP
FOR THE LEGAL PROFESSION

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Final Directions Paper – adopted by the Law Society Council, 23 August 2016

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Glossary of terms used in this report

| Term | Meaning |
|--------------------|--|
| AYLC | Australian Young Lawyers Committee |
| AWILPWG | Advancement of Women in the Legal Profession Working Group |
| CLAP | Commercial Law Firms Association Perth |
| CoL | College of Law |
| Council | The Law Society Council |
| D & I | Diversity and Inclusion |
| Executive | The Law Society Executive |
| FBC | Francis Burt Chambers |
| FWP | Flexible Work Practices |
| GASC | Graduate and Academic Standards Committee |
| GBRR | 20 th Anniversary Review of the 1994 Report of the Chief Justice's Taskforce on Gender Bias (known as the 2014 Gender Bias Review Report) |
| HREOC | Human Rights and Equal Opportunity Committee |
| JLSWLC | Joint Law Society/Women Lawyers Committee |
| Law Society | The Law Society of Western Australia Inc |
| LCA | Law Council of Australia |
| LPBWA | Legal Practice Board of Western Australia |
| MHWP Report | Law Society's 2011 Report 'Psychological Distress and Depression in the Legal Profession' (March, 2011) |
| MHWC | Mental Health and Wellbeing Committee |
| NARS | National Attrition and Re-engagement Study |
| PAE | Post Admission Experience |
| QPS | Quality Practice Standards |
| WABA | Western Australian Bar Association |
| WGEA | Workplace Gender Equality Agency |
| WLWA | Women Lawyers of Western Australia Inc. |
| YLC | Young Lawyers Committee |

Introduction

In September 2014, Women Lawyers of Western Australia Inc. (**WLWA**) launched the 20th Anniversary Review of the 1994 Report of the Chief Justice's Taskforce on Gender Bias (known as the 2014 Gender Bias Review Report or **GBRR**). Chapter 2 of the GBRR deals with 'Career Paths for Women in the Legal Profession'. It contains a total of 42 recommendations described further below in this report.

Council resolved the following at their meeting on the 21 October 2014 in response to the GBRR:

1. *The Women Lawyers of Western Australia's 20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce (Review) is noted and referred to the Executive to consider the recommendations in the Review and in particular the recommendations in Chapter 2 recommending action by the Law Society of Western Australia.*
2. *The Executive is requested to prepare a Directions Paper for approval by the Council with respect to action to be undertaken by the Law Society of Western Australia in relation to recommendations to which the Law Society is referred/affected.*
3. *Subsequent to approval by the Council the Directions Paper will be referred to the Joint Law Society Women Lawyers Committee and any other committee(s) as determined to be relevant for their attention/action.*

Subsequently the Executive established a Working Group (Working Group) to consider the recommendations in the GBRR as requested by Council. The nominated members of the Working Group were:

- two members of the Executive, namely the President and Senior Vice President;
- the Chief Executive Officer or his nominee;
- the General Manager Advocacy;
- any other person as co-opted by the Chief Executive Officer.

In April 2015, the Law Society's Working Group responding to the GBRR recommendations requested the Law Society's Joint Law Society/Women Lawyers Committee (**JLSWLC**) to:

- (i) identify where there are gaps between what the Law Society of Western Australia (**Law Society**) is currently doing and the recommendations in chapter 2;
- (ii) make practical proposals for the Law Society to satisfy these recommendations; and
- (iii) prepare a report for the Working Group.

The Working Group has reviewed the report from the JLSWLC and presents this report to Council for consideration at its meeting on 23 August 2016 with the following recommendations:

1. Council notes the "Final Directions Paper" – *The Law Society of Western Australia Response to the Women Lawyers of Western Australia's 20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Review 23 August 2016* attached and approves the recommendations made in it.

2. Prior to the establishment of the Advancement of Women in the Legal Profession Working Group Council refers the recommendations in the 'Final Directions Paper' to the Working Group to prepare an implementation plan (including timeframes) for the recommendations having regard to the current Strategic Plan priorities in this area.
3. Council thanks the JLSWLC and Working Group for the work they have undertaken.

Currently, on the Law Society's website page entitled 'For the Profession', under a further sub-heading of 'Legal Circles: Women Lawyers', is the following statement:

Increasing the proportion of women lawyers in positions of authority and retaining women in the profession are among the top priorities of the Law Society of Western Australia. This is reflected in our strategic campaigns for 2015/16, which include supporting lawyers through dealing with gender bias.

The Law Society has actioned a number of recommendations from the Women Lawyers of Western Australia's 2014 20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report. Chapter two of the Review is focused on the career paths for women in the legal profession. It contained 18 recommendations directed towards the Law Society.

The Law Society actioned 12 of these recommendations immediately and convened a working group to develop initiatives for the remaining six, as well as to support the profession in meeting the recommendations made for it.

At its annual strategic planning day held in February 2016 (and further re-considered at a Council meeting on 15 March 2016), the Council adopted 'Diversity and Inclusion' (focusing on issues affecting the retention and advancement of women in the profession) as one of two strategic campaigns for the Law Society over the next 12 months commencing 1 July 2016.

The Law Society's decision to adopt the 'Diversity and Inclusion' strategic campaign over the next 12 months closely complements the LCA's 'Inclusiveness and Diversity' (**I & D**) Programme which was announced in 2015 following the publication of the LCA's *National Attrition and Re-engagement Study (NARS)* in 2014. Law Council of Australia President Stuart Clark AM used International Women's Day (8 March, 2016) to "shine a light on the unprecedented push by the legal profession to take practical action to improve inclusiveness and diversity". In a press release he said that:

"No more is this seen as a niche 'women's issue' – this is now correctly perceived as a problem undermining the integrity and potential of Australia's legal profession.... We have moved beyond acknowledging the problem and beyond articulating an intent to do something about it. Today's mission is about pursuing pragmatic, results-oriented initiatives that can turn the tide."

This report is timely in terms of developing a plan to address the Law Society's strategic campaign of 'Diversity and Inclusion', as well as the objectives of the LCA's I & D Programme.

Overview of Chapter 2 of the GBRR

Chapter 2 of the GBRR contains a total of 42 recommendations dealing with the following:

- Women in academia: Recommendations 2.1. to 2.2
- Graduates/articled clerks: Recommendations 2.3 to 2.5
- Practice issues facing women: Recommendations 2.6 to 2.8
- Maternity leave: Recommendations 2.9 to 2.11
- Large commercial law firms: Recommendations 2.12 to 2.19
- Sexual harassment: Recommendations 2.20 to 2.22
- Women at the Bar: Recommendations 2.23 to 2.30
- Gender bias in the office of the DPP and SSO: Recommendations 2.31 to 2.32
- Conditions of work including salaries and drawings: Rec 2.34
- Availability of career support: Recommendation 2.35 to 2.36
- The changed culture of the profession: Recommendations 2.37 to 2.40
- Women leaders in the law: Recommendations 2.41 to 2.42.

The Executive Summary of the GBRR (released in March 2015) provided an overview of each chapter. The summary for Chapter 2 states:

“Currently women represent 47.96% of the legal profession in Western Australia. However a significant gap exists between numbers of women who enter the profession and the number that remain.

The Review commissioned a survey ‘An Analysis of Work-Related Issues and Conditions of Lawyers in Western Australia’ published in March 2014. Key survey findings include the personal cost to women of many legal work environments, inappropriate workplace behaviours and a perception of bias towards men in respect to promotion and salary.

In March 2014 the Law Council of Australia undertook a research project into all aspects of career progression for women in the legal profession, the National Attrition and Re-engagement Study (NARS). NARS identifies themes and trends that are consistent with this Review. The NARS focus is creating career path transformation for women by promoting flexible work practices, exploring alternative billing models, encouraging work life balance and addressing conscious and unconscious bias.

The recommendations in this chapter, which draw upon both of the above reports, deal with gender bias issues for female lawyers and law graduates in academic, private practice and government roles”.

The summary went on to highlight the most urgent recommendations for change dealing with general working conditions, flexible working conditions, the independent Bar and the legal profession in general.

As noted above, a significant number (16 in total) of the GBRR Chapter 2 recommendations are directed at the Law Society. There are eight recommendations directed at the Western Australia Bar Association (WABA), of which three recommendations are also jointly directed at the

Law Society. Another 13 recommendations are directed at the legal profession in general, three recommendations to government legal employers (namely the DDP and SSO) two recommendations to the Legal Practice Board and University employers and, finally, one recommendation to the College of Law.

The content of this report and wider considerations

As noted above this report will:

- (i) identify the opportunities between what the Law Society is doing and the recommendations in chapter 2;
- (ii) make practical proposals for the Law Society to satisfy these recommendations.

This report has an obvious focus on the GBRR recommendations directed at the Law Society but acknowledges that there are issues which will require both the Law Society and WABA to consider as professional associations jointly. This is consistent with what is expressed in the NARS Report (at Table 21, page 87 under the heading ‘Key drivers and issues for the profession’) that professional associations, such as the Law Society and Bar Associations, are in a position to influence law firms and law practices in respect of gender bias issues that impact upon women practitioners. In Table 21, the NARS Report makes the following statements regarding the overarching strategies put forward in NARS:

“Law Societies and Bar Associations have important roles to play in highlighting and addressing gender diversity through:

- *thought leadership*
- *role modelling*
- *promoting the business case for change*
- *promoting and rewarding best practice*
- *continuing professional development*
- *industry mentoring and networking*
- *research and evaluation*
- *transparency and accountability*
- *mechanisms to address bullying and sexual harassment.”*

And further that:

“Law firms (particularly large law firms) and legal practitioners are key agents of change in achieving greater gender diversity in the legal profession. Two factors need to be evident – top down management commitment to gender diversity and an ability to translate that commitment into practical actions.”

The Law Society can, both promote and support workplace change aimed at dealing with gender bias issues where they exist in commercial firms, at the Bar, in government or at other places of employment.

When addressing the recommendations in Chapter 2, it is particularly important to note the two following wider considerations.

Firstly, as noted above, the NARS Report identifies themes and trends consistent with the GBRR. It is difficult to overstate the importance of NARS as a significant study of the Australian legal profession. It provides detailed guidance for the future reform of the profession Australia-wide. Recognising this, the

Law Society has already been working with the Law Council of Australia (**LCA**) to further develop strategies stemming from the NARS Report to address the barriers women face in progressing through the legal profession in Western Australia.

The GBRR is also an important guide for the reform of the legal profession in this State because it involved a survey of Western Australian legal practitioners, extensive consultations with local stakeholders and addresses particular issues that arise for female practitioners in this State. These two reports (GBRR and NARS) provide a basis for the need to improve the retention and advancement of female practitioners so as to better serve the interests of both justice and the profession in this State. Due to the substantial overlap between the GBRR and NARS, this report also refers to many of the relevant 'Options for Consideration' found in Table 22 of chapter 7 of the NARS Report.

Secondly, it is also important to note the connection between Chapters 2 and 3 of the GBRR. Chapter 3 deals with the related issue of appointments of women to the judiciary. That chapter highlights the fact that, as at September 2014, across all State jurisdictions in Western Australia, less than 20% of judicial officers are women and there are no part-time positions for judicial officers. At a time when women are a significant majority of law graduates throughout Australia (approximately 63%), it is unacceptable that the Western Australian community is not more equitably represented by a diverse judiciary. As mentioned in the GBRR, addressing many of the gender bias issues facing women lawyers in the profession will ultimately lead to a larger pool of experienced, senior women lawyers from whose membership appointments to the judiciary might be made. Echoing this sentiment, we point out that GBRR Recommendation 3.3 calls for the implementation of the Chapter 2 recommendations. Another key aspect of Chapter 3 is aimed at making part-time judicial service possible for all legal practitioners (refer to GBRR Recommendations 3.4 – 3.6).

While this paper has only addressed the Chapter 2 recommendations it is acknowledged that the recommendations in Chapter 3 of the GBRR are also important to the Law Society's 'Diversity and Inclusion' strategic campaign.

Next Steps

This report acknowledges the Law Society's current and proposed actions already in place to address the recommendations in Chapter 2 of the GBRR. Following each GBRR recommendation is the corresponding relevant 'Options for Consideration' from the NARS Report (where applicable). Following each statement of the Law Society's current and proposed actions there is a 'Discussion' section that then leads to suggested actions regarding each relevant GBRR recommendation.

Note that, apart from identifying particular recommendations that were considered by WLWA as a 'priority' (as per the Executive Summary of the GBRR), these have not been included in this report for particular actions. This is because it is recognised that the Law Society may not be able to give effect to every suggested action due to resources or not having the authority to do so.

To progress these initiatives this report recommends that, at least for the duration of the current strategic campaign dealing with 'Diversity and Inclusion' (possibly until 2019 – see below), that the Law Society convene a cross-committee working group called the 'Advancement of Women in the Legal Profession Working Group' (or **AWILPWG**) consisting of representation from all relevant sub-committees (including the JLSWLC) and key staff of the Law Society assigned to this campaign. This recommendation stems from the NARS Report where it is suggested that professional bodies establish a Gender Diversity Taskforce comprising both senior female and male lawyers and barristers to lead and oversee initiatives in each jurisdiction.

In addition to addressing the GBRR recommendations, and recommending the formation of the AWILPWG, the following are some of the key recommendations in this report:

- the development of a Gender Action Plan to timetable and focus the Law Society's efforts to address gender diversity in the legal profession;
- allocate further resources to the Law Society's website on 'Women Lawyers' and 'Gender Diversity' to assist both members and others to progress gender diversity initiatives;
- host a forum to raise awareness and promote discussion within the legal profession of key features of the campaign;
- the Law Society, subject to financial assistance from WABA and WLWA, give consideration to commissioning and publishing (by 2019) a new retention study similar to the 1999 *'Report on the Retention of Legal Practitioners'*. This time period would allow for an assessment to be made on whether the Law Society's 2016/2017 'Diversity and Inclusion' strategic campaign, and other efforts by the profession, have addressed the issues and recommendations in the GBRR and also whether that has led to improvements in the retention and advancement of women in the legal profession.

Graduates (Articled Clerks)

GBRR RECOMMENDATION 2.3

The Law Society continues to conduct its Graduate and Academic Standards Committee (**GASC**) to monitor and advise on the graduate recruitment process.

GBRR RECOMMENDATION 2.4

WLWA Priority

The Law Society recommends guidelines or minimum standards for graduates in relation to aspects such as working conditions, salary, mental health issues, equal opportunity etc.

GBRR RECOMMENDATION 2.5

WLWA Priority

The College of Law surveys its students and alumni annually in an attempt to gather data on gender balance in graduate employment.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Transparency and Accountability (Table 22, page 90 NARS)

- Provide guidance about the hours lawyers should be working, remuneration, and performance relative to levels in the profession – particularly targeting those new to the profession

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Transparency and Accountability (Table 22, page 90 NARS)

- Commit to tracking and openly reporting to staff on gender equity trends

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

Recommendation 2.3

- GASC has been replaced by an annual meeting of the Law Society Executive, the YLC Convenor, Chief Executive Officer, Deans of the Law Schools and the Law Students' Law Society Presidents.

Recommendation 2.4

- The Australian Young Lawyers' Committee (**AYLC**) prepared guidelines, which are under review by the YLC, with a view to presenting them to Council. Approval of the guidelines has not been progressed by Law Council.

Recommendation 2.5

- Data on gender can be ascertained by reviewing the gender of persons to whom practising certificates are issued.

ACTION/S PROPOSED BY LAW SOCIETY

Recommendation 2.3

- The Law Society's Executive will meet annually with the Deans of all Law Schools and the YLC will meet regularly with the Law Students' Societies.

Recommendation 2.4

- The Law Society's YLC be asked to review the AYLC guidelines as a priority and to submit them to Council for endorsement of appropriate.

Recommendation 2.5

- Refer to JLSWLC to gather gender data, if in the committee's view the information would be useful.

RESPONSE OF THE JLSWLC

Discussion

Recommendation 2.3

This recommendation is aimed at identifying and addressing any gender bias in the recruitment of law graduates. As a result of the dissolution of the Graduate and Academic Standards Committee (**GASC**) there are now regular meetings between the Law Society and the Deans of Law Schools, where data is collected from the universities and the LPBWA about Graduates and admission trends over a five year period.

Each year the Law Society's Executive, YLC Convenor and Chief Executive Officer meets with the Deans of the Law Schools to prepare the 'Legal Practitioner Admission Analysis'. This report is a summary of five years of law school graduations, admissions and legal employment.

Further, potential employers of graduates should be encouraged to run their graduate recruitment process through a 'gender or diversity lens'. With the LCA's planned unconscious bias training packages, this aspect may be advanced by the increased education and awareness of the issue of unconscious bias within the legal profession.

Recommendation 2.4

It is noted that the AYLC has prepared a workplace standards, which outlines the minimum workplace requirements for junior practitioners. It is also noted that the YLC in each Australian jurisdiction may be invited to review the standards.

Whilst we acknowledge that having minimum standards would send a message to the profession about how we treat our junior lawyers it might be that the above issues are more about retention than graduates. The view of some YLC members is that discussion of gender bias in this graduate market will be a very hard sell and that it may be better to instead focus, from a positive perspective, on how to get women to remain in the profession post three years PAE. However, the AYLC Standards must also address salary equity as well as working conditions.

In the opinion of the JLSWLC, the AYLC Standards may only be a starting point, for the reasons put forward by the YLC, but that guidelines or minimum standards for graduates may address and prevent any imbalance in working conditions and salaries between male and female graduates, thus perhaps reducing the disparities which appear to develop later on in their respective careers. It is recommended that the Law Society determine its own position on the AYLC Standards.

Recommendation 2.5

The JLSWLC is of the view that data on gender balance in graduate employment is important, but would only be in a position to gather what other entities have produced, if they are willing to share.

Although we understand the Legal Practice Board of Western Australia (**LPBWA**) and College of Law (**CoL**) regularly collect and report on gender data, any currently available data may not be adequate to accurately represent the gender balance in graduate employment (whether we are talking about those employed, or with practising certificates or otherwise).

This is because:

- (i) the CoL has indicated that whilst they could create surveys to ascertain where graduates were being employed, they could not ensure they would be completed;
- (ii) the CoL has a vested interest in saying its alumni are happily employed in the field they wanted to be in;
- (iii) the LPBWA register of practitioners only informs us of how many are entering the profession, but not necessarily where they are employed; and
- (iv) there may be deficiencies in the information from the LPBWA, as not all practising lawyers need a practising certificate (e.g. Government lawyers are exempt).

Recommendations

Recommendation 2.3

The Law Society:

1. Executive to continue to meet annually with the Deans of all Law Schools, with a view to obtaining data that differentiates employment outcomes on the basis of gender and that 'gender bias' in graduate recruitment be a standing agenda item so any such issues can be addressed.
2. YLC to meet regularly with the Law Schools' student societies in order to be informed about any 'gender bias' issues.
3. Should obtain the most comprehensive data about graduate employment and then report upon whether the employment of graduates broadly reflects the gender ratios of final year law students. If it does not, the Law Society may consider whether any strategies are needed to address any possible gender bias in recruitment of law graduates.
4. YLC should consider producing a written guide for employers regarding the legal and professional conduct obligations that exist in respect of recruitment processes (e.g. Compliance with Equal Opportunity legislation and *Fair Work Act* provisions).
5. Consider holding an annual forum aimed at providing information and addressing issues concerning graduate recruitment. It should invite all employers to attend and participate in this annual forum.
6. Raise awareness and offer training in relation to unconscious bias and encourage all potential employers of graduates to consider their recruitment process through a 'diversity lens'.

Recommendation 2.4

The Law Society:

1. YLC should review the draft AYLC Standards and ensure that they contain minimum employment standards for graduates, address salary equity/gender pay inequity (which starts at the graduate level) as well as working conditions. These guidelines should include a requirement that, at a minimum, employers conduct a gender pay equity audit at least every two years.
2. To request that the LCA circulate the AYLC Standards to constituent bodies for comment/approval.
3. Publish any guidelines approved, advertised and endorsed by the LCA.
4. YLC report to the Law Society Council by no later than the end of 2016 on progress of Recommendation 2.4.

Recommendation 2.5

The Law Society:

1. Write to the CoL enquiring as to whether they survey their students and alumni annually in an attempt to gather data on gender balance in graduate employment and if they do would they provide it to the Law Society on an annual basis.
2. Write to the LPBWA to encourage them to collect any data regarding graduate recruitment and ask if they would provide it to the Law Society on an annual basis.
3. Review and collate this data or identify alternative sources of data and have the results published on the Law Society website.

Practice issues facing women

Law Society Promotion/Support/CPD regarding Flexible Work Practices

GBRR RECOMMENDATION 2.6

WLWA Priority

The Law Society of Western Australia publishes information on flexible work practices, including guidelines and best practice examples of firms utilising such practices, on its website to inform the profession and broader public about flexible work practices generally.

GBRR RECOMMENDATION 2.7

WLWA Priority

The Law Society provides Continuing Professional Development sessions for lawyers (including partners and directors) as well as human resources and non-legal management and support staff regarding flexible work practices in commercial practice, including the implementation of flexible arrangements for men and women, best practice examples and addressing common pitfalls for employers and employees.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Flexible Work Practices (Table 22, page 89 NARS)

Promote and facilitate the adoption of flexible work practices within the profession

- Publish and promote the latest international research on the business case for flexible work arrangements and describe the full range of flexible work practices that can be introduced.
- Develop and promote HR policies and guidelines on a broad range of flexible work practices.
- Identify and publicise senior women and male role models who work flexibly to eliminate the perception that flexibility and senior roles are incompatible and that only women want/need/access flexible work arrangements.
- Conduct research and examine the effects of work life balance tensions on the mental health of legal professionals.
- Develop a national website along the lines of the Canadian Bar Association's Work Life Balance Resource Centre, divided into the following categories:
 - Striking the balance
 - Health and wellness
 - Young lawyers
 - Women and law

- Advancing diversity
- Podcasts
- The Resource Centre contains more than 350 links to resources for individual practitioners and law firms on how to strike a balance between professional and personal life.
- Promote use of gender diversity tools and resources developed by Diversity Council Australia.
- Develop and promote education programmes and workshops on 'Return to Work' planning to assist employees and employers manage prolonged absences from the workplace.

Flexible Work Practices (Table 22, page 89 NARS)

Establish industry awards along the lines of:

- top 10 firms to work for if you're a woman
- top 10 firms for female graduates
- top 10 firms able to demonstrate results from introducing effective gender diversity strategies
- top 10 firms for flexible work practices

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

(regarding both GBRR Recommendations 2.6 and 2.7)

The Law Society has had FWP guidelines on its website for a number of years. Articles have been published in its journal *Brief* with practical examples on how to make FWP function successfully. Practitioners who use these practices have given presentations at Law Week seminars in the past few years.

ACTION PROPOSED BY LAW SOCIETY

(regarding both GBRR Recommendations 2.6 and 2.7)

1. Publish article in *Brief* annually, specifically addressing FWP (as part of practice management articles).
2. Continue to conduct annual seminars on FWP.
3. The Education Committee to consider broadening CPD to cover all aspects of best practice management.

RESPONSE OF THE JLSWLC

(regarding both GBRR Recommendations 2.6 and 2.7)

Discussion

In addition to the finding in the GBRR about the need for FWP to retain and advance women in the profession, the discussion in NARS about the need for FWP has been adopted. The key findings in NARS about FWP are summarised in the following points (from Table 22, page 89):

- Less than half the women working in large and medium sized firms were satisfied with their access to flexible working arrangements, the level of work-life balance and the level of support in their organisation for achieving work-life balance.
- The level of dissatisfaction with work-life balance was particularly high for women working in private practice.

Male lawyers too expressed dissatisfaction with work-life balance and the hours they were required to work in private practice.

- Opportunities for better work-life balance and more flexibility were key issues for women who had left the legal profession.
- Taking advantage of available flexible working arrangements was regarded by both women and men as jeopardising their career prospects, although women were more likely to think this was the case.
- Many of those surveyed regard access to flexible working arrangements as a necessity for retaining working parents in the legal profession.
- Greater access to, and support for, flexible working arrangements and a better work-life balance were identified as key retention factors for women.

Regarding the Law Society's proposed actions we endorse 1) and 2) above. However, it is recommended that articles dealing with FWP be published at least twice a year. Further such articles should be accessible, by members and non-members, electronically on the Law Society's website.

Regarding current resources on FWP on the Law Society's website we note that the Law Society website contains a 'Diversity and Inclusion' tab with a number of further drop-down links to other webpages one of which is 'Gender Diversity'. On that 'Gender Diversity' page there are links to the following:

- the LCA's 'Equitable Briefing Policy for Female Barristers and Advocates';
- the LSWA's 'Equality of Opportunity Model Briefing Policy';
- LCA's NARS Report;
- LCA's Diversity and Equality Charter;
- articles about LawCare WA;
- *Brief* articles (one of which is a 2011 article on FWP containing a reference to the Flexible Work Protocols which were adopted by the Law Society in 2011); and
- some links to relevant external organisations.

We understand that the YLC is working on a series of articles about different examples of work practices and why they work. These should be published in *Brief* and on the website as per above 1). The YLC also intends to use YLC social media to promote FWP. As this is relevant to this recommendation, it is recommended that the JLSWLC be invited to assist the YLC to source such examples (to broaden the source beyond just young lawyers). Furthermore, the proposed AWILPWG could contribute similar articles or commission, or conduct its own research regarding the availability of FWP for publication on the website and in *Brief*.

The Law Society may consider circulating Twitter links to online resources at least twice/month regarding FWP or other issues concerning work-life balance.

In relation to 3) above the Education Committee could possibly broaden CPD to include education about FWP.

We note that there is a view that FWP seminars might attract those in the profession who are already supportive of FWP. It is recommended that the Law Society encourage legal employers and law practices not yet fully embracing FWP to consider making it available to their legal staff. See discussion of this further below.

We also note that there were two CPD sessions run in 2015 on the issue of unconscious bias (one for managers and the other for employees) but these were not particularly well attended, especially the session for managers. While these seminars were not offered in 2016, the JLSWLC is aware that following the adoption of the Diversity Charter, the LCA is in the process of engaging a provider to conduct unconscious bias training. This topic is addressed further below in the context of dealing with other GBRR recommendations.

It is the JLSWLC views that there is little (if any) discussion in Western Australia at the moment about the connection between the availability of FWP and the issue of mental health of legal practitioners. However, the link is, one worthy of detailed consideration, when the availability of FWP can have a significant impact upon work-life balance in the legal profession, which for many is a cause of significant stress. It is noted that the *Mental Health and Wellbeing Recommendations 2016-2020* approved by Council in December 2015 does not have any recommendations directly addressing the issue of FWP. As a result it would be very worthwhile for the Education Committee to consider broadening FWP as an aspect of best practice management.

Recommendations

The Law Society:

1. Publish and promote to members and the broader legal community the latest international research on the business case for flexible work arrangements (e.g. by publicising the findings of NARS and the GBRR) using traditional communication (e.g. Articles in *Brief*, *Friday Facts*, emails or online newsletters) and social media (Twitter etc.). For example the availability of FWP is a key strategy in increasing retention of women/working parents which, in turn, is a key component in the business case for retaining women (e.g. see *Filling the Pool* research and recommendations) and to reduce work-place stress for many employees.
2. Education Committee to consider at broadening CPD to include FWP as an aspect of best practice management.
3. To develop and promote HR policies and guidelines on a FWP.
4. To promote FWP that can be introduced for example by publishing articles, past presentations and guidelines about FWP (as part of both gender equity and practice management articles) in *Brief* and online, at least twice per year.
5. To conduct annual CPD seminars on FWP with a differentiated target audience of employees and employers (i.e. separate seminars for these groups).
6. To conduct or commission regular surveys of the legal profession about (i) the availability and (ii) demand for FWP; and (iii) whether the lack, or availability, of flexibility has a reported impact (positive or negative) on work practices/satisfaction/work-life balance/mental health.
7. To identify and publicise senior women and male role models who work flexibly to eliminate the perception that flexibility and senior roles are incompatible and that only women want/need/access flexible work arrangements.
8. To maintain a page on its website addressing Gender Equity with links to various FWP resources such as the protocols, guides and best practice examples, support for women lawyers returning to work etc. for both employees and employers.

Employer support for flexible work practices

GBRR RECOMMENDATION 2.8

WLWA Priority

Employers actively implement, promote and appropriately support those on flexible work practices, including co-working and job-sharing arrangements, to ensure that flexible arrangements are available to those who require them, and that flexible workers are not disadvantaged in terms of opportunity and advancement by working in such a manner.

GBRR RECOMMENDATION 2.16

Employers more appropriately accommodate flexible work practice by:

- a) providing remote access and Virtual Private Networks; and
- b) the implementation of firm wide policies on expectations relating to completion of work outside business hours, to ensure hours of work are reasonable and not abused.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Flexible Work Practices (Table 22, page 89 NARS)

Introduce or expand the range of flexible work arrangements

- Consult with both women and men about the range of potential flexible work arrangements that might be put in place.
- To the maximum extent possible, make available a range of flexible work arrangements recognising:
 - These are extremely important for women lawyers and an increasing number of men, including those with and without children.
 - Recent Australian research shows workers who felt their roles were flexible were more satisfied, actively tried to increase their productivity and were more likely working at their lifetime best (Ernst & Young, 2012).
 - Other research indicates that women working at firms without flexible working arrangements were more likely to down-size their career aspirations, impeding their own advancement and the ability of employers to harness the full talent pool (Catalyst 2013).
- Give consideration to changing cultural norms about the value of ‘face time’ (the need to be seen to be in the office). Recent research demonstrates face time does not lead to top performance outcomes (Catalyst 2013).

Do not disadvantage people who access flexible work arrangements/parental leave

- Review career development and/or work allocation policies and practices to ensure they do not unintentionally disadvantage or discriminate against those who access flexible work arrangements.
- Monitor the career development opportunities, pathways and promotions of those accessing and not accessing flexible work arrangements/parental leave to identify any unintended barriers to advancement.

Transparency and Accountability (Table 22, page 90 NARS)

- Conduct and analyse the results of exit surveys of those leaving their employ to identify any trends or potential attrition drivers. Surveys should include questions relating to gender diversity and flexible work arrangements.

Workplace Culture (Table 22, page 91 NARS)

- Review performance/promotion criteria and networking and marketing events to ensure they are ‘bias free’ and do not unintentionally discriminate against lawyers working part-time or who access flexible working arrangements.

Role Modelling (Table 22, page 92 NARS)

- Actively promote senior women in the profession as role models.
- These role models should include women and men in different positions (e.g. working full and part-time).

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

The Law Society would support GBRR Recommendation 2.8.

Regarding GBRR Recommendation 2.16, the Law Society proposes to:

- Publish article in *Brief* annually, specifically addressing FWP (as part of practice management).
- Continue to conduct annual seminars on FWP.
- The Education Committee broadens CPD to cover all aspects of best practice management.

RESPONSE OF THE JLSWLC

Discussion

Both GBRR Recommendations 2.8 and 2.16 are directed at employers of lawyers supporting FWP.

In connection with both GBRR Recommendations 2.8 and 2.16 we refer to the discussion under GBRR Recommendations 2.6 – 2.7 about the need for FWP in the legal profession.

The GBRR Recommendation 2.16 implicitly highlights the connection between availability of FWP, reasonable work hours and work-life balance/mental health and wellbeing issues. In this context we note the *Mental Health and Wellbeing Recommendations 2016-2020 Report* which follows the review of the 2011 Report into *Psychological Distress and Depression in the Legal Profession*. The 2011 Report and the subsequent 2015 Review Report sets out the Law Society initiatives established to assist with mental health and wellbeing issues within the legal profession. These recommendations will also be beneficial for women practitioners. For example, the Law Society is to continue to run programmes and CPD seminars focused on health and wellbeing of practitioners, including reasonable working hours, and publish articles and guidelines about:

- optimal work hours;
- work hours that cause ‘burn out’; and
- options if members are burnt out from long work hours and stress, anxiety or depression.

However, it does not have any recommendations directly addressing the connection between the availability of FWP and the issue of mental health of legal practitioners. The Law Society could encourage the legal profession to engage with FWP as a strategy to address stress and burn out in the profession.

It is noted that the role of LawCare WA is a means of dealing with these issues but the Law Society should continue to promote the availability of the three counselling sessions to practitioners.

Recommendations

No specific action/s to implement GBRR Recommendations 2.8 and 2.16 as they are both directed at the legal employers.

The Law Society:

- Encourage the legal profession to implement these two recommendations by actioning some of the relevant options for consideration noted above. The Law Society can do this by following the actions we recommend regarding GBRR Recommendations 2.6 and 2.7 above.
- Give consideration to inviting prominent members of the profession to form a ‘Champions of Change’ to influence change to the legal profession addressing gender equity, diversity and inclusion in the profession. It is recommended that the Hon Wayne Martin AC, Chief Justice of Western Australia be invited to be the inaugural patron or ‘Champion’ of that group. Alternatively, the Law Society may consider inviting members of The Managing Partners Diversity Initiative to lead a ‘Champions of Change’ initiative in this State. It is understood that the Managing Partners Diversity Initiative was established by 13 major firms in order to collaborate on initiatives to address issues that are hindering the progress of female lawyers.

Maternity leave

Employer's promotion criteria, support for FWP and reintegration training (for women on, or returning from, maternity leave)

GBRR RECOMMENDATION 2.9

WLWA Priority

Employers address the issues limiting women's careers, including by:

- a) the adoption of more flexible conditions for promotion, including amending terms for promotion to remove criteria purely based on post qualification experience (PQE) or hours worked and to include criteria acknowledging work quality and output;
- b) the provision of reintegration training for women to assist those on leave or returning from leave to maintain their skills and knowledge, particularly in relation to areas of law, practice and technology;
- c) the determination of strategies to counter the view that flexible work equates to low career aspirations;¹
- d) the provision of networking and career-building opportunities for women, including those on maternity leave; and
- e) the determination of strategies to ensure the needs of women returning from maternity leave are understood and appropriately accommodated, by engaging in honest and open dialogue with such women about the concerns they have and being prepared to implement change and improve office practices as a result of that dialogue.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW PRACTICES AND CHAMBERS (as appropriate)

Leadership (Table 22, page 88 NARS)

Adopt a 'top down' approach to gender diversity

- Embrace 'hands-on' leadership in driving gender diversity. According to latest research from McKinsey and Company (2012) on best practice this includes:
 - Partners/CEOs investing personal capital and actively role-modelling the desired mind-sets and behaviours.
 - Actively promoting the business case that gender diversity matters to the performance and success of the firm/practice.
 - Appointing senior and well-respected managers to 'shine the spotlight' on diversity and build change-management capability.

Adopt best practice to achieving gender equity

- Embed gender diversity into firm strategy (not just HR policy). According to best practice evidence, this would include:
 - Setting priority goals.
 - Identifying key strategies for effecting cultural, organisational, policy and practice change to achieve these goals.
 - Identifying and measuring key indicators of success.
 - Publicising and promoting to employees the strategy and progress against desired outcomes.
- Calculate the cost of losing and replacing lawyers after several years investment in training and professional development.

Flexible Work Practices (Table 22, page 89 NARS)

Do not disadvantage people who access flexible work arrangements/parental leave

- Review career development and/or work allocation policies and practices to ensure they do not unintentionally disadvantage or discriminate against those who access flexible work arrangements.
- Monitor the career development opportunities, pathways and promotions of those accessing and not accessing flexible work arrangements/parental leave to identify any unintended barriers to advancement.

Workplace Culture (Table 22, page 91 NARS)

- Review performance/promotion criteria and networking and marketing events to ensure they are 'bias free' and do not unintentionally discriminate against lawyers working part-time or who access flexible working arrangements.

Mentoring, Sponsorship and Networking (Table 22, page 93 NARS)

Enhance mentoring and sponsorship opportunities for women

- Develop in-house or support structured industry-wide mentoring programmes for women;
 - in different law firm contexts (large, medium and small) and at the Bar; and
 - at different stages in women's careers.
- Develop sponsorship programmes in their workplace.
- Enhance networking opportunities.
- Support women only and senior lawyer (male and female) networking events including with clients.
- Develop or support women to participate in training that would improve their business development and networking skills.

- Schedule networking and marketing events taking into account lawyers with flexible working arrangements (e.g. consider organising lunch time events, rotating day of events).

Empowering Women (Table 22, page 95 NARS)

- Encourage and support women to participate in training that assists them to promote their skills, apply for positions, negotiate salaries and seek promotions.
- Facilitate or provide access to high quality leadership programmes, including programmes specifically addressing women and leadership issues.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

Women on maternity leave have networking and other opportunities through their membership of the Society, which provides on-leave membership.

ACTION PROPOSED BY LAW SOCIETY

1. Promote on-leave membership.
2. The Law Society's Education Committee to consider broadening CPD to cover all aspects of best practice management.
3. The Law Society to consider asking the members of large law firms if women in their practices who have returned from maternity leave can, on an ad hoc basis, talk to/mentor practitioners from other law firms who are returning to practice.

RESPONSE OF THE JLSWLC

Discussion

GBRR Recommendation 2.9 is directed at legal employers. However, the Law Society can take an active role in promoting these strategies to the profession.

Regarding 2) above, a similar recommendation has already been endorsed under Recommendation 2.6. The Law Society's Education Committee may consider holding CPD seminars to address greater flexibility for promotion criteria and encompass reintegration training as an aspect of best practice management. See also the discussion below under Recommendation 2.11 regarding reintegration training.

The Law Society to also consider publicising best practice examples of non-traditional criteria for promotion that acknowledges work quality and output (e.g. alternatives to the 'billable hour'). See GBRR Recommendation 2.38 for further discussion about alternatives to the billable hour.

In relation to 3) above, this is dealt with under GBRR Recommendation 2.10 dealing with mentoring.

To give full effect to the GBRR Recommendation 2.9, the focus needs to be more clearly on the issues that limit the careers of women and impact upon the retention of women in legal practice. The Key Findings found under the headings 'Flexible Work Practices' and 'Workplace Culture' found in Table 22 – Options for Consideration in the NARS Report (page 89) states that:

- Less than half the women working in large and medium sized firms were satisfied with their access to flexible working arrangements, the level of work-life balance and the level of support in their organisation for achieving work-life balance.
- The level of dissatisfaction with work-life balance was particularly high for women working in private practice. Male lawyers too expressed dissatisfaction with work-life balance and the hours they were required to work in private practice.
- Opportunities for better work-life balance and more flexibility were key issues for women who had left the legal profession.
- Taking advantage of available flexible working arrangements was regarded by both women and men as jeopardising their career prospects, although women were more likely to think this was the case.
- Many of those surveyed regard access to flexible working arrangements as a necessity for retaining working parents in the legal profession.
- Greater access to, and support for, flexible working arrangements and a better work-life balance were identified as key retention factors for women.
- Unhappiness with workplace culture was also one of the top four reasons for women deciding to leave the legal profession altogether.
- Workplace culture played out in a number of ways including gender bias in relation to flexible work arrangements (leading to the barriers to promotion), allocation of unsatisfying work, exclusion from marketing and networking events, and the requirement for very long work hours.
- A change in culture and appreciation of diversity was cited as a factor that would have retained women in the profession.

In order to address these findings, and the issues in GBRR Recommendation 2.9, there are numerous options for consideration provided in Table 22 of NARS (as noted above), which provide various strategies to counter the view that flexible work equates to low career aspirations, to provide for networking and career-building opportunities for women (including those on maternity leave) and to ensure the needs of women returning from maternity leave are understood and appropriately accommodated. Also relevant to the discussion are GBRR Recommendations 2.8 and 2.16 (dealing with FWP), 2.10 (dealing with mentoring) and 2.11 (dealing with reintegration training).

As recommended under GBRR Recommendation 2.6, information about all of these initiatives could be placed on the Law Society's 'Gender Diversity' webpage. This is the approach in other jurisdictions (e.g. South Australia and NSW).

Recommendations

The Law Society:

1. Continues to promote 'on-leave' membership of the Law Society.
2. Education Committee to consider broadening CPD to address greater flexibility for promotion criteria and encompass reintegration training as an aspect of best practice management.
3. Promotes to the legal profession many of the above 'Options for Consideration' from Table 22 of NARS Report to encourage employers to (among other things):
 - support FWP
 - re-think traditional promotion criteria
 - provide networking and career-building opportunities for women
 - provide reintegration training for working parents on, or returning from, parental leave
 - counter the view that flexible work equates to low career aspirations.
4. Places the information about all of these initiatives on the Law Society's 'Gender Diversity' webpage (as per actions recommended under GBRR Recommendation 2.6).

NOTES:

1. See Australian Human Rights Commission, Accelerating the Advance of Women in Leadership: 2013 <https://www.humanrights.gov.au/publications/accelerating-advancement-women-leadershiplistening-learning-leading>.

Mentoring

GBRR RECOMMENDATION 2.10

The Law Society of Western Australia and Women Lawyers of Western Australia continue and actively promote their mentoring programmes, particularly to women returning from leave.

See also GBRR Recommendation 2.35 which suggests Law Society to assist employees in small firm with mentors.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Mentoring, Sponsorship and Networking (Table 22, page 93 NARS)

Enhance mentoring and sponsorship opportunities for women

- In partnership with industry, develop a structured industry-wide mentoring programme for women. This may include:
 - mentoring for young women in large, medium and small firms by experienced women lawyers;
 - peer mentoring across the industry for senior lawyers/barristers;
 - mentoring for senior women lawyers who are looking to progress their career in the industry; and
 - peer networking for senior leaders and decision makers (men and women) who can help shift the culture within the legal profession.
- Develop and provide CPD training on how to be an effective mentor/mentee. Mentees will be able to gain new perspectives to advance their career and develop meaningful professional connections and sponsors. Men and women will be able to develop their skills in mentoring women and gain understanding of how to implement a more balanced culture within their workplace that provides equal opportunities for men and women at leadership levels.

- Develop good practice sponsorship programmes and promote their benefits.
- Ensure CPD marketing and networking events are scheduled for different times of the day – and include lunchtime options.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

The mentoring programmes for practitioners admitted less than five years and for Aboriginal law students. The programme's facilitator is sponsored by large law firms.

ACTION PROPOSED BY LAW SOCIETY

- 1) Ask WLWA to encourage its members to volunteer as mentors for the junior practitioners' programme.
- 2) The Law Society to consider asking the members of large law firms if women in their practices who have returned from maternity leave can, on an ad hoc basis, talk to/mentor practitioners from other law firms who are returning to practice.

RESPONSE OF THE JLSWLC

Discussion

Mentoring of women lawyers is a vital tool to aid the retention and support for women practitioners. We strongly endorse the corresponding discussion and recommendations in the NARS Report which addresses Mentoring, Sponsorship and Networking (particularly the emphasis on providing for mentoring to women in different law firm contexts and at different stages in women's careers).

The Law Society should continue to encourage mentors from the profession in general and actively promote its mentoring system to women at all career stages.

It is recommended that the Law Society monitor the effectiveness of mentoring programmes by inviting anonymous feedback about the effectiveness of such programmes from participants (both mentors and mentees) with a view to identifying the needs of mentees, improving the training for mentors and improving the delivery of such programmes. The Law Society should provide an annual report to Council about the assessment of the programme.

Recommendations

The Law Society:

1. Continues the mentoring programmes however, these should not be limited to junior practitioners.
2. Continues to promote its mentoring programme to women at all career stages offering, where possible, a mentor-mentee match for firm size/type and appropriate to the relevant stage in the mentee's career.
3. Continues to encourage all members of the profession to volunteer as mentors for the mentoring programme by regularly publicising it and offering regular courses for mentors.
4. Monitors the effectiveness of mentoring programmes and prepares an annual report to Council about the effectiveness of the programme.

Law Society provision of reintegration training

GBRR RECOMMENDATION 2.11

WLWA Priority

The Law Society provides training for practitioners seeking to return to the profession after an extended period of time and such training to include issues relating to technology used in legal organisations, networking opportunities and professional and personal development skills.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Flexible Work Practices (Table 22, page 89 NARS)

- Develop and promote education programmes and workshops on 'Return to Work' planning to assist employees and employers manage prolonged absences from the workplace.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

Continue to address these issues relating to transitioning back to the workforce as part of the CPD Programme on best practice management.

RESPONSE OF THE JLSWLC

Discussion

The actions under this recommendation needs to address the considerable obstacles and challenges for non-working lawyers with young children to remain connected to, or re-integrate with, the profession either during or after an extended period on leave.

The availability of specific reintegration training for practitioners (not just women) who are re-entering the profession after any significant time on leave or other absence from the work-force may be of great benefit. Such training should be practical and regularly available, incorporate the latest workplace technology, promote flexible work practices (as a benefit to all, as a health and wellbeing issue, rather than a 'women's issue'), encompass issues relating to maternity/paternity leave and career progression issues.

Physical accessibility of training is a significant issue for practitioners with young children and/or babies. Consideration should be given to the timing of training, the attendees cost and the manner of delivery, so as to maximise the participation of those who would benefit most from such courses (e.g. after hours courses are not particularly suitable for new mothers/parents).

It is recommended that the Law Society also consider conducting regular surveys of practitioners who have returned to work after a significant period of leave to determine the demand for, and the most appropriate content/method of delivery of reintegration course/s.

The above NARS Options for Consideration also suggests employers should be offered 'Return to Work' planning Programmes or workshops to assist in the management of employees who have had prolonged absences from the workplace.

The Australian Human Rights Commission '*Successful Strategies to Support Working Parents – a resource for employers*' published in 2016 found at www.supportingworkingparents.gov.au/employers/successful-strategies-support-working-parents provides a guide to various return to work strategies and which highlights 'leading practices' used to successfully support pregnant employees and working parents.

Recommendations

The Law Society:

1. Continues to address issues such as technology and professional/personal development as part of the CPD Programme on best practice management
2. Offers, as part of CPD, reintegration training for practitioners who are re-entering the profession after any significant time on leave. Any such reintegration training should be practical, affordable for non-working parents and provided in a family-friendly way.
3. Considers conducting regular surveys of practitioners who have returned to work after a significant period
4. Considers opportunities for non-working parents to network whilst on leave, in order to maintain networks. This should include opportunities that permit bringing along babies or small children at family friendly times and in a suitable location.
5. Considers developing and offering 'Return to Work' planning programmes or workshops to employers to assist them in the management of employees who have had prolonged absences from the workplace.

Large commercial law firms

Law Society promotion of voluntary targets for women in practice

GBRR RECOMMENDATION 2.12

The Law Society of Western Australia sets, publishes and promotes targets for the number of women in legal practice and asks law firms to report to the Law Society annually on achievement of these targets as a reporting requirement associated with the Law Society's Quality Practice Standard (QPS), or in the case of national and international firms, utilising other quality assurance systems as part of the duties of a good corporate citizen.

See also GBRR Recommendations 2.4 – 2.6 regarding Graduates/Articled Clerks

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Transparency and Accountability (Table 22, NARS page 90)

- Continue to research, monitor, discuss and publicise profession-wide statistics and trends on gender equity in the profession.
- Publicise comparative statistics and trends with other professions.
- Investigate the possibility of being able to report publically on the outcomes of new mandatory reporting requirements on gender indicators for firms with 100+ employees under the *Workplace Gender Equality Act 2012*. Such outcomes relate to:
 - Recruitment and selection;
 - Gender composition of governing bodies;
 - Remuneration;
 - Flexible working arrangements;
 - Consultation with employees on issues concerning gender equality in the workplace; and
 - Sex-based harassment and discrimination.
- Collect and publish ongoing and standardised data on participation rates, attrition rates and leadership levels across the profession (and potentially individual firms).
- In consultation with industry, set voluntary gender equity targets for the profession to aspire to, and report and publically acknowledge firms that reach or exceed these targets over time.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

Two CPD seminars were held on unconscious bias in February 2015. The LCA is considering engaging a trainer in unconscious bias for use by constituent bodies.

ACTION PROPOSED BY LAW SOCIETY

Refer to the JLSWLC to suggest a target for the number of women in legal practice.

RESPONSE OF THE JLSWLC

Discussion

The QPS Committee has previously advised it cannot be made to report on the number of women practitioners (and briefing practices).

As mentioned under the corresponding NARS Options for Consideration it is agreed that there is a need for transparency and accountability concerning the participation and attrition rates of female lawyers. Reporting on gender data would assist in identifying gender equity trends, and the success of any measures taken to improve participation and retention rates.

In regards to ascertaining the number of women in practice, the Law Society may ask for assistance from the LPBWA. If the raw data cannot be accessed this way, the Law Society or LPBWA should confer as to the most appropriate way to produce statistics on the relevant numbers each year.

Exit surveys could also be conducted by the Law Society from time to time to address issues that might factor into a woman's decision to leave practice. See also GBRR Recommendation 2.39 in this context.

There appears to be support in the legal profession for gender voluntary targets to be set, in consultation with the profession (as recommended by NARS at page 90), for the numbers of women at various levels in legal practice. This is another step to support women achieving senior positions.

See similar issues about gender targets raised in the discussion regarding GBRR Recommendations 2.4 – 2.6 (Graduates/Articled Clerks), 2.41 (women in leadership) and 2.42 (employers engaging with voluntary gender targets).

Recommendations

The Law Society:

1. Considers establishing voluntary targets within the first six months of this report being adopted. The targets must be approved by the Law Society Council.
2. Encourages legal employers to commit to tracking and openly reporting to staff on gender equity measurement and trends.
3. Considers conducting exit surveys from time to time which address issues that might factor into a woman's decision to leave practice. Surveys should include questions relating to gender diversity and flexible work arrangements.
4. Conducts and analyses the results of such exit surveys of those leaving their employment to identify any trends or potential attrition drivers.
5. In consultation with the legal profession may set, publish and promote voluntary gender targets (as opposed to quotas) for women in practice at various levels of seniority which will enable legal practices to set goals which are realistic and take into account their particular circumstances. These should be revised from time to time according to information about how those targets are being met. NB: that there are guidelines on the setting of voluntary gender targets available from the Workplace Gender Equality Agency.
6. Considers incentives for employers meeting with, or exceeding, voluntary gender targets, by establishing industry awards for such firms that exceed the voluntary targets, and best firm to demonstrate results from introducing effective gender diversity strategies.
7. Provides a link on its website to reporting requirements on gender indicators for firms with 100+ employees under the *Workplace Gender Equality Act 2012* for outcomes which relate to:
 - Recruitment and selection;
 - Gender composition of governing bodies;
 - Remuneration;
 - Flexible working arrangements;
 - Consultation with employees on issues concerning gender equality in the workplace; and
 - Sex-based harassment and discrimination.

Employer support for gender targets

GBRR RECOMMENDATION 2.13

Employers implement strategies to achieve these targets including:

- a) targeted coaching;
- b) sponsors and mentors including case managing those returning from parental leave; and
- c) ensuring lawyers (generally senior associates and partners) who work flexibly continue to progress their careers.

See also related discussion under GBRR Recommendation 2.42

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Leadership (Table 22, NARS page 88)

Adopt a 'top down' approach to gender diversity

- Embrace 'hands-on' leadership in driving gender diversity. According to latest research from McKinsey and Company (2012) on best practice this includes:
 - Partners/CEOs investing personal capital and actively role-modeling the desired mind-sets and behaviours.
 - Actively promoting the business case that gender diversity matters to the performance and success of the firm/practice.
 - Appointing senior and well-respected managers to 'shine the spotlight' on diversity and build change-management capability.

Adopt best practice to achieving gender equity

- Embed gender diversity into firm strategy (not just HR policy). According to best practice evidence, this would include:
 - Setting priority goals.
 - Identifying key strategies for effecting cultural, organisational, policy and practice change to achieve these goals.
 - Identifying and measuring key indicators of success.
 - Publicising and promoting to employees the strategy and progress against desired outcomes.
- Calculate the cost of losing and replacing lawyers after several years investment in training and professional development.

Flexible Work Practices (Table 22, NARS page 89)

Do not disadvantage people who access flexible work arrangements/parental leave

- Review career development and/or work allocation policies and practices to ensure they do not unintentionally disadvantage or discriminate against those who access flexible work arrangements.

- Monitor the career development opportunities, pathways and promotions of those accessing and not accessing flexible work arrangements/parental leave to identify any unintended barriers to advancement.

Transparency and Accountability (Table 22, NARS page 90)

- Collect data on internal leadership levels and attrition.
- Conduct and analyse the results of exit surveys of those leaving their employ to identify any trends or potential attrition drivers. Surveys should include questions relating to gender diversity and flexible work arrangements.
- Consider setting voluntary targets (as opposed to quotas) which will enable them to set goals which are realistic and take into account their particular circumstances. Guidelines and tool kits on gender target-setting are available from the Workplace Gender Equality Agency.
- Commit to tracking and openly reporting to staff on gender equity trends.

Mentoring, Sponsorship and Networking (Table 22, NARS page 93)

Enhance mentoring and sponsorship opportunities for women

- Develop in-house or support structured industry-wide mentoring programmes for women:
 - in different law firm contexts (large, medium and small) and at the Bar.
 - at different stages in women's career.
- Develop sponsorship programmes in their workplace.
- Enhance networking opportunities.
- Support women only and senior lawyer (male and female) networking events including with clients.
- Develop or support women to participate in training that would improve their business development and networking skills.
- Schedule networking and marketing events taking into account lawyers with flexible working arrangements (e.g. consider organising lunch time events, rotating day of events).

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

1. Continue to conduct annual seminars on FWP.
2. The Education Committee to consider at broadening CPD to cover all aspects of best practice management.
3. The Law Society to consider asking the members of large law firms if women in their practices who have returned from maternity leave can, on an ad hoc basis, talk to/mentor practitioners from other law firms who are returning to practice.

RESPONSE OF THE JLSWLC

Discussion

GBRR Recommendation 2.13 is aimed at employers supporting voluntary gender targets. It is a recommendation in NARS that these targets be set in consultation with the legal profession, so that they are realistic and take into account their particular circumstances.

The above consider NARS Options for Consideration details various strategies which employers (and, in some cases, bar chambers) can implement which should improve the participation and retention of women in the legal profession. These strategies should assist employers to meet voluntary gender targets.

In addition to all of the actions recommended above at GBRR Recommendation 2.12, the Law Society could provide information on its 'Gender Equity' webpage about strategies aimed at making employers aware of, and meeting, voluntary gender targets.

Recommendations

The Law Society:

1. Encourages leaders of all law firms/practices and the Bar to engage in various strategies, which will provide managers with strategies to support employees working flexibly, particularly after taking maternity leave.
2. In addition to all of the actions recommended above at GBRR Recommendation 2.12, provide information on its 'Gender Equity' webpage about strategies aimed at making employers aware of, and meeting, voluntary gender targets.
3. Considers how it might be able to provide incentive for employers of its members to meet voluntary gender targets, by establishing industry awards for firms exceeding such targets and, for example, the best firm to demonstrate results from introducing effective gender diversity strategies.

Unconscious bias training as part of CPD

GBRR RECOMMENDATION 2.14

WLWA Priority

Unconscious bias training be made mandatory and regular (at least every three years) as part of the Continuing Profession Development requirements of the Legal Practice Board of Western Australia for the renewal of practising certificates.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Workplace Culture (Table 22, NARS page 91)

- Through CPD, develop and provide leadership training for partners/managing partners on organisational cultural change.
- Through CPD, develop and provide leadership training for partners/managing partners on negative cultural aspects and unconscious bias in the workplace.

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Workplace Culture (Table 22, NARS page 91)

- The 'top-down' approach to gender diversity involves a key phase of tackling mindsets and bringing about cultural change.
- Conduct training or other mechanisms to address 'unconscious bias' from management down.
- Review performance/promotion criteria and networking and marketing events to ensure they are 'bias free' and do not unintentionally discriminate against lawyers working part-time or who access flexible working arrangements.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

The Law Society conducted two CPD sessions on unconscious bias in February 2015.

ACTION PROPOSED BY LAW SOCIETY

Continue to include unconscious bias as part of CPD Programmes.

RESPONSE OF THE JLSWLC

Discussion

It is noted that the LCA in consultation with the constituent bodies is considering engaging a provider for online unconscious bias training.

More than 25% of women lawyers in Western Australia surveyed in Nexus Network's 'An Analysis of work-related issues and conditions for lawyers in Western Australia' (Final Report, October 2013) commissioned by WLWA (the 'Nexus Survey') reported experiencing inappropriate workplace behaviour, and

a further 16% had observed it, suggests a significant degree of unconscious bias in the legal profession in this State. The NARS Report also found that half of women lawyers who work part-time report discrimination due to family responsibilities. These findings are alarming and shows the need for unconscious bias training.

The following were key findings for the NARS Report about 'Workplace Culture' (Table 22, NARS, page 91):

- Unhappiness with workplace culture was the most frequent and most significant factor for career moves by women (and, to a lesser extent, men).
- This was particularly the case for women making career moves from large private firms to medium and small firms and from private firms to government or corporate legal.
- Unhappiness with workplace culture was also one of the top four reasons for women deciding to leave the legal profession altogether.
- Workplace culture played out in the number of ways including gender bias in relation to flexible work arrangements (leading to the barriers to promotion), allocation of unsatisfying work, exclusion from marketing and networking events, and the requirement for very long work hours.
- A change in culture and appreciation of diversity was cited as a factor that would have retained women in the profession.
- Many of the cultural dimensions of gender bias were regarded as subtle and sometimes unconscious. Bringing about cultural and other change required addressing 'subtle' biases is to shift underlying beliefs and attitudes.

These findings support the importance of unconscious bias training in addressing unfair assumptions about women's roles, abilities and behaviour as well as outdated assumptions about the division of family responsibilities between men and women. Without unconscious bias training there is a risk that these unfair assumptions will continue to impact upon the advancement and retention women in the profession.

It is also noted that the WABA has introduced the topic of unconscious bias as a component of the bar readers course in 2016.

If unconscious bias cannot be a mandatory CPD requirement, it is recommended that these seminars should at least be offered on an annual basis and be permanently available online.

The cost of unconscious bias training be kept reasonable to assist the strategic campaign 'Diversity and Inclusion' achieve a broader awareness within the legal profession (and, eventually, a broader engagement).

The Law Society should hold an annual CPD event on FWP, which also addresses the topic of 'unconscious bias'.

It is recommended that the Law Society also conduct, or commission, a follow up survey every three to five years so that the existence of unconscious bias for Western Australian lawyers is identified so it can be dealt with.

Recommendations

The Law Society:

1. Promotes to the legal profession the research and findings of the 2013 Final Report of the Nexus Network's *An Analysis of work-related issues and conditions for lawyers in Western Australia* commissioned by WLWA (the 'Nexus Survey') and the LCA's 2014 NARS Report addressing unconscious bias in the legal profession. This is to support and encourage better engagement with unconscious bias training.
2. Provides unconscious bias training for both employers and employees on a regular basis.
3. Further, because there are very few, if any, formal complaints made about unconscious bias, the Law Society approaches the Law Council of Australia to conduct, or commission, a follow up survey (perhaps every three to five years) so that the existence of any such issues, and any associated trends, can be identified and dealt with.
4. CPD seminars should at least be offered on an annual basis and be permanently available online. The cost of any unconscious bias training should be kept as low as possible in order to broaden awareness of, and engagement with, issues of unconscious bias by the legal profession.
5. Subject to 4) above if the Law Society does not resolve to promote and provide unconscious bias training as a stand-alone mandatory CPD topic on an annual basis, then instead the Law Society may hold an annual CPD event on flexible work practices, which also addresses the topic of 'unconscious bias' is a significant focus.

Cultural change

GBRR RECOMMENDATION 2.15

WLWA Priority

Employers consider what steps they can take to implement cultural change to ensure that:

- a) there is less focus on 'face time';
- b) there are good role models within the firm and support for women; and
- c) formal flexible working arrangements are mainstreamed.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Leadership (Table 22, NARS page 88)

Adopt a 'top down' approach to gender diversity

- Embrace 'hands-on' leadership in driving gender diversity. According to latest research from McKinsey and Company (2012) on best practice this includes:
 - Partners/CEOs investing personal capital and actively role-modeling the desired mind-sets and behaviours.
 - Actively promoting the business case that gender diversity matters to the performance and success of the firm/practice.
 - Appointing senior and well-respected managers to 'shine the spotlight' on diversity and build change-management capability.

Flexible Work Practices (Table 22, NARS page 89)

- Give consideration to changing cultural norms about the value of 'face time' (the need to be seen to be in the office). Recent research demonstrates face time does not lead to top performance outcomes (Catalyst 2013).

Do not disadvantage people access flexible work arrangements/parental leave

- Review career development and/or work allocation policies and practices to ensure they do not unintentionally disadvantage or discriminate against those who access flexible work arrangements.
- Monitor the career development opportunities, Pathways and promotions of those accessing and not accessing flexible work arrangements/Parental leave to identify any unintended barriers to advancement.

Workplace Culture (Table 22, NARS page 91)

- The 'top-down' approach to gender diversity involves a key phase of tackling mindsets and bringing about cultural change.
- Conduct training or other mechanisms to address 'unconscious bias' from management down.

- Review performance/promotion criteria and networking and marketing events to ensure they are 'bias free' and do not unintentionally discriminate against lawyers working part-time or who access flexible working arrangements.

Role Modelling (Table 22, NARS page 92)

- Actively promote senior women in the profession as role models.
- These role models should include women and men in different positions (e.g. working full and part-time).

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

1. Publish at least one annual article in *Brief* specifically addressing FWP (as part of practice management).
2. Continue to conduct annual seminar on FWP.
3. The Education Committee considers broadening CPD to cover all aspects of best practice management.

RESPONSE OF THE JLSWLC

Discussion

This is another recommendation aimed at employers which mentions concepts such as support for flexible work practices, alternative billing methods, role models and support for women.

The above actions proposed by the Law Society are the same as those stated in GBRR Recommendations 2.6 and 2.7.

The Law Society supports the discussion about alternatives to the 'billable hours' model of rewarding workplace performance, which relies upon 'face time'. This was considered in the MHWB Report and is increasingly a key focus for reform in much contemporary practice management discussion. See our discussion of this further below under GBRR Recommendation 2.38.

The Law Society can also encourage cultural change by law firms/practices and bar chambers by recognising and rewarding those that implement workplace change that supports the advancement and retention of women lawyers. For example, industry recognition awards along the lines suggested by NARS (Table 22, page 92), such as:

- Best or top three firms able to demonstrate results from introducing effective diversity strategies; and
- Best or top three firms for FWP.

It is suggested that the Law Society could encourage legal firms and the Bar to support the advancement and retention of women lawyers by creating a 'Champions for Change' Programme that selects key industry figures to be a visible and high profile part of that Programme; for example, Chief Justice Wayne Martin, Court of Appeal President Carmel McClure or High Court Justice Mary Gordon etc. This has already been recommended in the context of GBRR Recommendations 2.6 and 2.7.

Recommendations

The Law Society:

1. Considers assisting employers to embrace cultural change that then encourages employers to support FWP referred to in the recommended actions under GBRR Recommendations 2.6 and 2.7.
2. Considers discussion about alternatives to 'billable hours' model of rewarding workplace performance, which relies upon 'face time'. See further below under GBRR Recommendation 2.38.

Support for flexible work practices and work life balance

GBRR RECOMMENDATION 2.16

Employers more appropriately accommodate flexible work practice by:

- a) providing remote access and Virtual Private Networks; and
- b) the implementation of firm wide policies on expectations relating to completion of work outside business hours, to ensure hours of work are reasonable and not abused.

The above recommendation is similar to, and overlaps with, GBRR Recommendations 2.8, 2.9, 2.13 and 2.15, which are directed at employers of lawyers.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

See under GBRR Recommendations 2.8, 2.9, 2.13 and 2.15.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

1. Publish at least one annual article in *Brief* specifically addressing FWP (as part of practice management).
2. Continue to conduct annual seminars on FWP.
3. The Education Committee considers broadening CPD to cover all aspects of best practice management.

RESPONSE OF THE JLSWLC

Discussion

Industry leadership and role modeling by the Law Society has also been addressed above under the discussion regarding GBRR Recommendations 2.6, 2.7, 2.10, 2.11, 2.12 and 2.14.

See also the discussion and recommendations for action by the Law Society under GBRR Recommendations 2.37, 2.38 and 2.40 below.

The actions proposed by the Law Society above have already been addressed in connection with these other GBRR recommendations. The above proposed actions represent the bare minimum and further steps can be taken to encourage and influence employers to accommodate FWP.

Recommendations

Refer to GBRR Recommendations 2.6, 2.7, 2.10, 2.11, 2.12 and 2.14; and the recommendations for action by the Law Society under GBRR Recommendations 2.37, 2.38 and 2.40 below.

Childcare

GBRR RECOMMENDATION 2.17

Employers consider what steps can be taken to assist with access to and the cost of childcare, including preferred supplier arrangements with childcare providers and salary packaging.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

No corresponding options for consideration.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

As a member privilege, the Law Society has an arrangement with Dial-an-Angel. Members receive a discount on the first booking.

ACTION PROPOSED BY LAW SOCIETY

No action

RESPONSE OF THE JLSWLC

Discussion

Childcare is acknowledged as a personal matter, which most parents are very selective and careful. The provision and cost of workplace childcare is a complex issue. It is a service for staff that, anecdotally, we understand most legal employers do not provide. The reasons for this are not clear, although clearly economics would be a relevant factor.

It is also not known what level or type of support, if any, legal employers in Western Australia give to employees regarding the provision or cost of childcare. In order to understand what support for childcare legal employers provide to their employees, it is recommended that the Law Society invite law firms whether they provide, or subsidise, child care facilities for their employees.

Information on the Dial-an-Angel service can be found on the Law Society website. It is recommended that the Law Society increase promotion of this service to members. We also query whether there is a difficulty with using that service only on an emergency basis and not for regular on-going childcare.

Given the shortage of childcare places in the community, the Law Society may consider conducting a survey to ask: (i) what are their current issues regarding childcare (ii) how members perceive the Law Society might assist them and, depending on the outcome of that survey, look into the feasibility of partnering with a childcare centre to facilitate access by Law Society members to quality childcare services based in the city.

It is important that the Law Society and the legal profession contribute to the debate challenging assumptions and stereotypes about gender roles and childcare (and elder-care) responsibilities. This debate is important as it challenges assumptions that continue to form part of the barriers to women's equal participation and retention in the legal profession.

We recommend these issues be given further consideration by the AWILPWG, by examining [recent reports and literature in this area; for example, see the 2015 Report of the Australian Government's Productivity Commission's inquiry into childcare and early childhood learning found at \[www.pc.gov.au/inquiries/completed/childcare/report\]\(http://www.pc.gov.au/inquiries/completed/childcare/report\)](#).

Recommendations

The Law Society:

1. To promote information provided by law firms who provide, subsidise or otherwise facilitate access to childcare services for their employees.
2. To conduct a survey asking members what issues they have with childcare and how they consider the Law Society could assist them with this issue.
3. Subject to 2 above and depending upon the outcome of such a survey, the Law Society could also look into options for partnering with a childcare centre to provide members with better access to quality childcare services based in the city.
4. Increase promotion of the 'Dial-an-Angel' service available to members.
5. To contribute to current public debate about the need for better access to childcare services. This could include publicly challenging assumptions about gender roles and caring responsibilities in order to address stereotypes that women should be the primary carers of children (and with primary responsibility for care of the elderly).

Diversity representative

GBRR RECOMMENDATION 2.19

Large legal firms appoint a diversity representative to support and promote career progression for women.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

There is no equivalent option for consideration in NARS, however some of the following may be relevant options for consideration:

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Leadership (Table 22, NARS page 88)

Adopt a 'top down' approach to gender diversity

- Embrace 'hands-on' leadership in driving gender diversity. According to latest research from McKinsey and Company (2012) on best practice this includes:
 - Partners/CEOs investing personal capital and actively role-modelling the desired mind-sets and behaviours.
 - Actively promoting the business case that gender diversity matters to the performance and success of the firm/practice.
 - Appointing senior and well-respected managers to 'shine the spotlight' on diversity and build change-management capability.

Role Modelling (Table 22, NARS page 92)

- Actively promote senior women in the profession as role models.
- These role models should include women and men in different positions (e.g. working full and part-time).

Empowering Women (Table 22, NARS page 92)

- Encourage and support women to participate in training that assists them to promote their skills, apply for positions, negotiate salaries and seek promotions.
- Facilitate or provide access to high quality leadership programmes, including programmes specifically addressing women and leadership issues.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

The Law Society to consider asking the large law firms if women in their practices who have returned from maternity leave can, on an ad hoc basis, talk to/mentor practitioners from other law firms who are returning to practice.

RESPONSE OF THE JLSWLC

Discussion

This is another recommendation directed at law firms. Large law firms should appoint their own diversity representative.

It is noted that the Law Society's offers access to online resources to support firm diversity representatives on its website.

The Law Society could encourage diversity representatives in large law firms to form an inter-firm group to share information at regular meetings hosted by the Law Society. This would allow the Law Society to keep abreast of gender equity issues as they arise in large practice environments.

Recommendations

The Law Society:

1. To encourage large law firms to appoint their own diversity representative and offer them access to online resources via the Law Society's website to support them in that role.
2. To encourage the diversity representatives in large firms to form an inter-firm diversity representatives' group in order to share information at regular meetings. The Law Society could host the meetings in order to keep abreast of gender equity issues as they arise in large practice environments.

Sexual harassment

GBRR RECOMMENDATION 2.20

Employers implement, or work to improve, sexual harassment policies and educate staff (both legal and non-legal) about what constitutes sexual harassment and that sexual harassment will not be tolerated in any form, through induction training and ongoing training programmes.

GBRR RECOMMENDATION 2.21

The Law Society of Western Australia:

- a) promotes understanding and awareness of the sexual harassment clauses of the Professional Conduct Rules to members of the profession;
- b) conducts Continuing Professional Development sessions (attracting CPD points in the areas required by the Legal Practice Board for the renewal of practising certificates) relating to sexual harassment in workplaces; and
- c) makes practitioners aware of the ability to speak to a senior practitioner and/or Senior Counsel in relation to ethical and professional misconduct issues (including in relation to sexual harassment by another practitioner).

GBRR RECOMMENDATION 2.22

The Law Society of Western Australia continues its LawCare WA counselling and information service and promotes the service and its ability to assist practitioners experiencing difficulties including dealing with instances of unprofessional conduct or professional misconduct.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Discrimination, Sexual Harassment and Bullying (Table 22, NARS page 94)

- Develop clear and accessible written policies and guidelines on addressing and countering gender discrimination, sexual harassment, and bullying.
- Develop clear, accessible complaint processes in place for gender discrimination, sexual harassment and bullying.
- Conduct training on gender discrimination, sexual harassment and on bullying (including ‘bystander’ training for those who witness discrimination, sexual harassment or bullying).

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Discrimination, Sexual Harassment and Bullying (Table 22, NARS page 94)

- Establish taskforces in each jurisdiction to address the issue of sexual harassment in the legal profession.
- As a basis, use recommendations contained in the Victorian Equal opportunity and Human Rights Commission 2013

Report ‘Changing the Rules: the experiences of female lawyers in Victoria’.

- professional associations develop a communications plan to promote issues of gender equality and awareness of sexual harassment in the legal profession – including publishing articles, seminars, media releases and social media.
- Consider the development of a voluntary code to include, for example, the profile of a firm, number of complaints made based on gender, number of discrimination/sexual harassment complaints lodged internally and externally, and the outcomes of these.
- Consider the development of a mechanism whereby lawyers who are experiencing sexual harassment can confidentially discuss their situation, and seek advice on strategies and options and/or have any complaint handled by a panel review comprising external organisations.
- Develop and promote education programmes on sexual harassment.
- Establish taskforces in each jurisdiction to address the reported high level of bullying in the legal profession, particularly against women at the Bar.
- Publicise the new anti-bullying amendments to the *Fair Work Act 2009* (Cth) which create a significant new landscape for employers, include a new definition of ‘bullied at work’, and will allow a worker who believes they have been bullied to apply to the Fair Work Commission for an order to stop the bullying.
- Develop and provide training on anti-bullying strategies for Partners/HR Managers.
- Consider the development of a mechanism whereby lawyers who are being bullied can confidentially discuss their situation and seek advice on strategies and options.

Workplace Culture (Table 22, NARS page 91)

- Through CPD, develop and provide leadership training for partners/managing partners on organisational cultural change.
- Through CPD, develop and provide leadership training for partners/managing partners on negative cultural aspects and unconscious bias in the workplace.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

No current Law Society initiatives or programmes regarding GBRR Recs 2.20 – 2.21.

Regarding GBRR Recs 2.22 the Law Society points out that its LawCare WA service is available to Law Society members and staff.

The Members Advice Referral Service is available to Law Society members through WABA.

ACTION PROPOSED BY LAW SOCIETY

The Law Society supports both Recommendations 2.20 and 2.21 with the additional action proposed regarding Recommendation 2.21 of referring this to the Education Committee for an ethics seminar.

Regarding GBRR Recs 2.22 the Law Society intends to continue providing the LawCare WA service to its members and staff.

RESPONSE OF THE JLSWLC

Discussion

Rule 17(5) of the *Legal Profession Conduct Rules 2010* ('LPCR') prohibits a practitioner engaging in conduct which constitutes —

- (a) unlawful discrimination; or
- (b) unlawful harassment; or
- (c) workplace bullying.

Rule 17 (1) defines workplace bullying as behaviour that could reasonably be expected to offend, intimidate, degrade, humiliate, isolate or alienate a person working in a workplace. A breach of this rule may constitute unsatisfactory professional conduct or professional misconduct. In addition to Rule 17 there are various laws² that make it unlawful to sexually harass a person at work and to sexually discriminate in a workplace. In addition, employers are under a duty to ensure they have adequate systems in place to prevent or stop bullying.³

However, despite the existence of data which suggests there are significant problems in legal workplaces with these issues, there are very few legal actions taken in either the courts or disciplinary action in the LPBWA to address workplace discrimination, harassment and bullying.

The 'NARS' Report surveyed 4000 practitioners across Australia. The key findings of the study concerning issue of discrimination, sexual harassment and bullying were as follows:

- One in four women and 8% of males surveyed reported having experienced sexual harassment in their current workplace.
- Female barristers were twice as likely as women working in private practice or in-house legal roles to have experienced sexual harassment at their workplace.
- Half of the women and 38% of the males surveyed reported having experienced bullying or intimidation in their current workplace.
- Experiences of bullying and intimidation were particularly high for female barristers.
- Almost half of the women lawyers surveyed reported having experienced discrimination due to gender in the current workplace, compared to 13% of males.
- Women working in large and medium sized firms and in the CBD were more likely to report gender discrimination than women working in small firms or outside of the CBD.
- These experiences of discrimination included being allocated different work, being denied career opportunities (briefs, promotions) and being judged as less competent by clients and/or colleagues.

Similar findings are contained in the WLWA's 2014 'Nexus Survey' that fed into the GBRR. Other studies have also shown that workplace bullying and sexual harassment occur in the legal profession in WA (see in particular the 2010 report of Marayam Omari, *Towards Dignity and Respect at Work; An Exploration of Work Behaviours in a Professional Environment*, Final Report, Law Society of Western Australia, August 2010 that fed into the MHWB Report.

A review of recent cases reported on the Legal Practitioners Disciplinary Penalties Database (on the LPBWA website) found no complaints about unlawful harassment or intimidation or workplace bullying as a basis for an action alleging unprofessional conduct. This appears to be contrary to the findings of the above studies about the incidence of these issues in the workplace. It suggests either a lack of awareness about the relevant LPCR or reluctance by lawyers to invoke its protection. Any reluctance to acknowledge and challenge, or even a failure to recognise, workplace bullying is particularly concerning in the current environment where there is an oversupply of young and less experienced lawyers many of whom are experiencing long hours, high stress, competitiveness and fear of employer reprisals. Bullying and harassment can lead lawyers to become dissatisfied or fearful at work and possibly leaving the workforce. It is important to prevent any form of bullying and harassment.

Several participants in the NARS survey also commented that there was sufficient best practice management and ethical work practices, but what was lacking was the monitoring and enforcement to move equitable practices beyond 'lip service' to authentic change. A key finding in the NARS Report was that stakeholders see an important role for professional bodies in raising awareness about gender issues and providing clarity and guidance about what constitutes discrimination.

It is recommended that the Law Society assist with addressing these issues by providing education, training and information about gender discrimination, sexual harassment and workplace bullying (including 'bystander' training for those who witness discrimination, sexual harassment or bullying).

In addition, develop model policies and guidelines to address gender discrimination, sexual harassment and bullying; and assist law firms to develop clear, accessible complaint processes to deal with allegations of this type of conduct. It is noted that enforcement of the laws and the *Legal Profession Conduct Rules* is outside the Law Society's mandate.

Recommendations

The Law Society:

1. To encourage legal practices to develop written policies and guidelines on addressing and countering gender discrimination, sexual harassment and bullying (and also develop and promote a 'best practice' model for their use).
2. To encourage legal practices to develop complaint processes to deal with workplace gender discrimination, sexual harassment and bullying including provisions for bystanders (and also develop and promote a 'best practice' model for their use).
3. To provide education, training and information to the profession about the impropriety, illegality and consequences of gender discrimination, sexual harassment and bullying in the legal workplace including the existence of LPCR 17(5) and the consequences of a breach of that rule.
4. To raise awareness about the ability to speak with a senior practitioner and/or Senior Counsel in relation to ethical and professional misconduct issues including sexual discrimination, sexual harassment and workplace bullying. i.e. Senior Advisors Panel.
5. To continue the LawCare WA service and actively promote the service.

NOTES:

2. See the *Sexual Discrimination Act 1984* (Cth) and the *Equal Opportunity Act 1984* (WA).
3. See the *Occupational Safety and Health Act 1984* (WA).

Women at the Bar

Model Briefing Policy

GBRR RECOMMENDATION 2.23

WLWA Priority

The Western Australian Bar Association:

- a) reviews, assesses and effectively publicises its Model Briefing Policy;
- b) collects feedback from instructing solicitors and barristers as to the nature and rate of engagement of female barristers and any perceived obstruction or incentive to such engagement; and
- c) adopts a policy directed to practising barristers that seeks to achieve the objectives of its Model Briefing Policy, including those relating to working flexibly.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Financial Barriers at the Bar (Table 22, NARS page 93)

- Review briefing practices to identify any unintended bias, and monitor impact of any changes

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Financial Barriers at the Bar (Table 22, NARS page 93)

- Continue to promote the Law Council's Equitable Briefing Policy for Female Barristers and Advocates.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

The LCA has a reporting requirement in its equitable briefing policy.

ACTION PROPOSED BY LAW SOCIETY

1. Ask Law Council if law firms report under the policy.
2. The Law Society to consider publishing firm's briefing practices as a regular feature in *Brief* with a view to firms becoming competitive and improving their briefing practices.

RESPONSE OF THE JLSWLC

Discussion

This recommendation is aimed at WABA and its Model Briefing Policy encouraging equitable briefing of female barristers. However, as suggested in the above NARS Options for Consideration, there is a role for both Law Societies and law firms to support and promote equitable briefing policies.

In September 2010, the Law Society resolved to adopt the LCA's Equitable Briefing Policy.⁴ This policy requires that in selecting counsel that all reasonable endeavours should be

made to, amongst other things, regularly monitor and review the engagement of female counsel and periodically report on the nature and rate of female counsel engaged. In the notes with respect to the implementation of those policy objectives it states that briefing firms, agencies, and where applicable barristers' clerks, should develop the capacity to collect such data and what issues the collected data ought to address.

The Law Society has also previously adopted an 'Equality of Opportunity Model Briefing Policy' that is supplementary to the LCA policy on matters that are not gender-based. That document is available on the Law Society's website. The policy notes the profession to LPCR rule 17(5) and issues associated with discriminatory briefing practices.

Further, in 2015 the Law Society endorsed and adopted the LCA's Diversity and Equality Charter ('Charter').⁵ The Charter states that the 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. The Law Society is of the view that it is an important step in publicly acknowledging the need for and embracing diversity and equality in our profession and encourages the adoption of the Charter.

A key finding of the NARS Report was that female barristers in the study referred to both conscious and unconscious bias at the Bar. Conscious bias included female barristers being denied briefs because clients preferred male counsel. The NARS Report also found that the pool of aspiring female barristers was limited and recommended that professional bodies (Law Societies and Bar Associations) develop a marketing approach to attract women to the Bar and to assist them to obtain briefs (e.g. joint training/networking sessions with male barristers).⁶ The NARS Report identified an opportunity for clear and transparent data and guidance to be provided on briefing practices, pay rates, expectations with respect to career progression and on leadership levels of women across the profession. The recommended action in the NARS Report is to monitor, publicise and promote discussion of profession-wide statistics and trends on gender equity to inform measures on ways to improve rates of attrition and leadership across the profession.

The LCA's Equitable Briefing Policy has recently been considered by the Equitable Briefing Working Group of the NSW Bar Association.⁷ In their report (which forms part of the NSW Bar Association's response to the NARS study) they find that:

- the Equitable Briefing Policy does not establish tangible obligations as to outcomes;
- there is no comprehensive register of individuals, firms, agencies or corporations that have adopted the National Briefing Policy;
- the Equitable Briefing Policy, does not impose an obligation to implement, monitor or report on adherence to the Policy.

The report concludes that there is no consistency in information available in relation to adoption and implementation of the Equitable Briefing Policy. It suggests that the imposition of a reporting requirement would create some transparency around the adoption and implementation of the Policy that has been lacking to date. The Report recommends that a revised version

of the policy (as annexed to the Report) be adopted which will ensure that there is a transparent and accountable system in place to monitor equitable briefing practices (reporting requirements set out).

In October 2015 the Law Society's President and CEO attended a National Equitable Briefing Roundtable discussion hosted by LCA in Sydney. It was agreed the LCA would develop a draft National Model Equitable Briefing Policy the aim of which would be to achieve a nationally consistent approach towards bringing about cultural and attitudinal change within the legal profession with respect to gender briefing practices. The important thing to note about the draft policy is that it contains voluntary briefing targets for firms and Senior Counsel aimed at increasing the rate of briefing of women barristers.

The Law Council adopted a Revised Draft National Model Equitable Briefing Policy in June 2016.

With respect to the regular monitoring and review of the engagement of female barristers, both the current WABA Model Briefing Policy and the LCA's current National Model Briefing Policy provide that, "*Briefing firms, agencies and where applicable barristers' clerks should develop the capacity to collect data and report upon that data so as to identify the nature and rate of engagement of female counsel.*"

With respect to Financial Barriers at the Bar, the NARS Report found that women lawyers reported financial barriers to entering the Bar and working part-time at, or taking temporary leave from, the Bar. To address this issue the NARS Report recommended that Law Societies and Bar Associations continue to promote the LCA's Equitable Briefing Policy for Female Barristers and Advocates and monitor/report on its use.⁸ See also GBRR Recommendation 2.30 below regarding 'Encouraging Women to join the Bar'.

Recommendations

The Law Society:

1. Should promote on its website best practice examples of adoption of the Equitable Briefing Policy.
2. Should include 'Women at the Bar' as a separate page on its website (with a link to WABA's 'Women Barristers' webpage).
3. Contact the WABA about how best to develop a marketing approach to attract women to the Bar and to assist them to obtain briefs (e.g. joint training/networking sessions with male barristers).

NOTES:

4. WA Law Society website, Diversity and Inclusion, Gender Diversity (link to Law Council National Briefing Policy adopted by WA Law Society).
5. WA Law Society website, Legal Circles, Women Lawyers (link to Law Council of Australia's Diversity and Equality Charter adopted by WA Law Society).
6. LCA NARS Report, page 8.
7. Review of the Application in New South Wales of the Equitable Briefing Policy of the Law Council of Australia, Equitable Briefing Working Group, Report to the President of the New South Wales Bar Association, August 2015.
8. LCA NARS Report: page 93.

Briefing by State agencies

GBRR RECOMMENDATION 2.25

WLWA Priority

The Law Society of Western Australia and the Western Australian Bar Association lobby the Western Australian Government to adopt a policy similar in content and purpose to the Commonwealth's *Legal Services Directions*, especially as it relates to the briefing of women by State agencies.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Financial Barriers at the Bar (Table 22, NARS p.93)

- Consider a voluntary Procurement Protocol for purchasing of legal services. By signing up to the protocol, in-house legal departments commit to consider a potential supplier's diversity and inclusion practices as part of their normal tendering process. This would complement the Workplace Gender equality procurement principles which took effect from 1 August 2013.

BY LAW FIRMS/PRACTICES AND CHAMBERS (where appropriate)

Financial Barriers at the Bar (Table 22, NARS p.93)

- Review briefing practices to identify any unintended bias, and monitor impact of any changes.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

Refer this recommendation to the JLSWLC to consider.

RESPONSE OF THE JLSWLC

Discussion

According to the Office of the Legal Services Coordination within the Commonwealth Attorney-General's Department:

"The Legal Services Directions 2005 are a set of binding rules issued by a former Attorney-General about the performance of Commonwealth legal work. The directions set out requirements for sound practice in the provision of legal services to the Australian Government. They offer tools to manage legal, financial and reputational risks to the Australian Government's interests. They also give Australian Government agencies the freedom to manage their particular risks while providing a supportive framework of good practice. The Legal Services Policy Branch, incorporating the Office of Legal Services

*Coordination (OLSC), administers the directions."*⁹

Examples of how the *Legal Services Directions* mandates affirmative action for women barristers is seen in from Appendix D 'Engagement of Counsel' where it refers to the following:

- Commonwealth agencies and legal service providers are encouraged to brief a broad range of counsel and, in particular, women (R2) .
- All barristers are to be selected for their skills and competency independently of their gender. A Commonwealth agency is to ensure that arbitrary and prejudicial factors do not operate to exclude the engagement of female barristers or to limit the range of barristers being considered for the brief (R4C).

It is noted that the Australian Bar Association is undertaking a review of the current national equitable briefing policy, successfully adopted more than a decade ago by the Commonwealth government and entrenched in the *Legal Services Directions* Appendix D.

The Model Briefing Policy has been adopted by the Victorian Government into legal services panel arrangements and by a number of other firms and organisations.

The NSW Government has also adopted an equitable briefing policy.¹⁰ NSW Government agencies and their legal service providers are required to consider female counsel and ensure an equitable distribution of work to both male and female counsel. Under the policy, when government agencies engage counsel they should make all reasonable endeavours to identify and genuinely consider briefing a female counsel in the relevant practice area. It also provides a format for monitoring, reviewing and reporting on the engagement of female counsel.

In New South Wales, Senior Counsel cannot be retained without the Attorney General's approval.¹¹ The NSW Memorandum on retaining Senior Counsel states that:

"The Attorney General is responsible for monitoring compliance with the Equitable Briefing Policy. Agencies are expected to make reasonable endeavours to identify possible female Senior Counsel who could be engaged when nominating senior counsel. Agencies are expected to propose at least one female Senior Counsel in a request to the Attorney General. Where a female Senior Counsel is not nominated, reasons should be provided (e.g. there are no female Senior Counsel practising in the area)."

It is recommended that the Law Society consider the content of the Commonwealth's *Legal Services Directions* and the approach taken by other Governments to improve the briefing of women by State agencies.

The Law Society and WABA should jointly consider lobbying the WA State Government to adopt a policy similar in content and purpose to the Commonwealth's *Legal Services Directions* as it relates to the briefing of women by State agencies.

Recommendations

The Law Society:

1. Consider the content of the Commonwealth's *Legal Services Directions* and the approach taken by other Governments to improve the briefing of women by State agencies.
2. Approach WABA to jointly lobby the WA State Government to adopt a policy similar in content and purpose to the Commonwealth's *Legal Services Directions* as it relates to the briefing of women by State agencies.

NOTES:

9. See Office of the Legal Services Coordination within the Commonwealth Attorney-General's Department webpage at www.ag.gov.au/LegalSystem/LegalServicesCoordination/Pages/Legalservicesdirectionsandguidancenotes.aspx
10. The Equitable Briefing Policy of the NSW Government was approved for adoption by all government agencies on 8 July 2008. The policy is available at w.justice.nsw.gov.au/legal-services-coordination/Documents/cabinetapp-ebp.pdf.
11. for further information see the NSW Premier's Memorandum Briefing Senior Counsel M2009-17.

Court hours

RECOMMENDATION 2.27

WLWA Priority

The Law Society of Western Australia and the Western Australian Bar Association support Women Lawyers of Western Australia in requesting that the courts avoid or minimise the listing of matters in a way that disadvantages those with family responsibilities, in particular, that matters should generally not be listed before 9.15am or after 4.30pm save for emergencies.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

None

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

This issue has been raised by the Law Society and its request has not been successful in all jurisdictions.

RESPONSE OF THE JLSWLC

Discussion

Court sitting hours need to be predictable for practitioners with family responsibilities. Irregular or unpredictable long court sitting hours can be a significant disincentive for practitioners (both men and women) from appearing in courts. As court work is central to the role of a barrister, this can cause difficulties for barristers with family responsibilities.

From the response given to the Law Society's Executive it appears that the heads of jurisdiction of the Family Court and of the Magistrates Court of WA cannot agree to never to list matters either before 9.15am or after 4.30pm (except for emergencies). It may be that the workload of these (and other) courts requires, either sometimes or consistently, longer than usual sitting hours.

Anecdotally the JLSWLC is aware that some judicial officers, where it occasionally becomes necessary to sit outside of the hours of 9.15am – 4.30pm, will make enquiries of practitioners about their capacity to appear (or continue to appear) at those times. The experience of some practitioners is that there is generally a willingness to accommodate a practitioner who might find it difficult to continue with extending sitting hours due to family responsibilities. It is noted that some judges and/or magistrates have more awareness in relation to the difficulties that long sitting hours presents for practitioners with family responsibilities.

In order for the Law Society to effectively address the above recommendation, it would be useful to have information about:

- (i) Which WA Courts have sitting times which *regularly* or *persistently* commence before 9.15am or after 4.30pm;
- (ii) Apart from 'emergencies' what is the reason for regular or persistent longer than usual Court sitting hours (outside of 9.15am – 4.30pm);

- (iii) Where it is necessary for courts to regularly or persistently sit outside of normal Court hours (between 9.15am – 4.30pm) what practices or procedures exist to accommodate practitioners with family responsibilities?

Where no Court initiated practices or procedures exist to accommodate practitioners with family responsibilities who are required to sit outside the hours of 9.15am – 4.30pm the Law Society's Courts Committee, in consultation with the JLSWLC, to consider a submission to the heads of jurisdiction that they sign up to a protocol about 'normal' court sitting times and what courts can do to accommodate practitioners with family responsibilities where courts have to sit outside 'normal' court sitting times.

Research might need to be conducted into court sitting hours and any relevant policies or practices in other jurisdictions to assist in providing evidence that the implementation of 'family friendly' court hours is not an impediment to courts getting through their workloads.

For example, the following appears on the NSW Bar Association's webpage at www.nswbar.asn.au/for-members/equal-opportunity:

Court sitting hours

The President of the New South Wales Bar Association raised the issue of certainty in relation to court sitting hours with the chief justice of the Supreme Court of New South Wales, the Hon Tom Bathurst AC.

The President specifically noted the difficulties that arise when there is a lack of certainty around sitting hours for those members with carer's responsibilities.

The adoption of a formal protocol has the potential to fetter judicial discretion in relation to case management.

The following has been suggested to judges of the Supreme Court:

- That the parties be notified at the earliest possible time of a proposal to commence proceedings any time before 9.30am or to sit beyond 4.30pm in the case of divisions or 4.45pm in the case of the Court of Appeal.
- If possible, 24 hours' notice be given of a proposal for an early start date and notice of extended sitting hours be given no later than prior to the luncheon adjournment on the day it is proposed to sit the extended hours.
- In considering whether or not to set extended hours, it is relevant to consider the family or other carer responsibilities of the practitioner.
- These suggestions will not apply to bail applications or applications in the Duty Judge list. The suggestions listed above are for guidance only, and are not binding.

The following courts have all adopted similar practices to ensure predictable sitting hours in their jurisdictions, including:

- District Court
- Land and Environment Court
- Federal Court
- Local Court
- Supreme Court
- Federal Circuit Court

Recommendation

1. The Law Society to continue to encourage the heads of jurisdiction to support and implement the change.

Data on briefing

RECOMMENDATION 2.28

WLWA Priority

All private legal firms be encouraged to adopt legal reporting to the Law Society on their expenditure in the same manner as government departments which outline the number of women and men briefed by number of briefs and total fees paid, with the aim to highlight pay inequity where it occurs.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Financial Barriers at the Bar (Table 22, NARS page 93)

- Review briefing practices to identify any unintended bias, and monitor impact of any changes

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Financial Barriers at the Bar (Table 22, NARS page 93)

- Continue to promote the Law Council's Equitable Briefing Policy for Female Barristers and Advocates.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

No action

RESPONSE OF THE JLSWLC

Discussion

This recommendation raises similar issues to those discussed in connection with GBRR Recommendation 2.23 above, in particular paragraph b) of that recommendation. However GBRR Recommendation 2.28 is aimed at encouraging private firms to report on their briefing practices with the aim to highlight pay inequity where it occurs.

The significance of this recommendation is that, at present, there are no legal requirements for private law firms to provide this data and accordingly it is difficult to get an accurate picture of the extent to which women barristers are sharing in the considerable expenditure made by firms in briefing the independent Bar.

It is important to note that data of this kind is capable of collection and, upon analysis, provides a significant insight into whether women barristers are sharing equitably in that expenditure. For example the Victorian Bar has produced the *Women Barristers Briefing Report 2009 – 2015* which summarises the results of briefing practices recorded by the Victorian Legal Services Panel. Under the panel arrangement, panel firms must report to government on the use of barristers for government work under the panel contract in accordance with their obligation to adhere to the Victorian Bar Equal Opportunity Model Briefing policy. The Victorian Bar reported that as at December 2014, there were 1,981 Victorian practising barristers, of whom 537 (27%) were female and 1,444 (73%) were male. The Table below provides information on the aggregated total of barristers' briefs from government, sorted by gender, for the period 1 July 2009 to 30 June 2015.

Table 1: Barrister briefings by Gender - 1 July 2009 to 30 June 2015

| | Male Barristers | Female Barristers | Total |
|-----------------------|-----------------|-------------------|--------------|
| Fees charged | \$23,883,812 | \$8,121,702 | \$32,005,514 |
| % of total fees | 74.6% | 25.4% | 100% |
| No. of briefs | 3,159 | 1,694 | 4,853 |
| % of total briefs | 65.1% | 34.9% | 100% |
| Average fees invoiced | \$7,561 | \$4,794 | \$6,595 |

This is an example of how data collection about briefing practices can reveal whether such practices are equitable or not.

Recommendations

The Law Society:

1. In relation to the LCA's National Equitable Briefing Policy for Female Barristers and Advocates, the Law Society to:
 - a. adopt and promote it to private firms and hold seminars, in conjunction with the WABA, for firms to explain the importance of the Equitable Briefing Policy; and
 - b. encourage all persons or entities who brief or select barristers:
 - (i) to make all reasonable endeavours to brief or select women barristers with relevant seniority and expertise, experience or interest in the relevant practice area;
 - (ii) by 1 July 2018:
 - a. to brief or select senior women barristers accounting for at least 20% of all briefs and/or 20% of the value of all brief fees paid to senior barristers;
 - b. to brief or select junior women barristers accounting for at least 30% of all briefs and/or 30% of the value of all brief fees paid to junior barristers;
 - c. noting the need to adjust these targets to reflect local conditions; and
 - (iii) to provide a confidential report to the local Bar Association, Law Society, or directly to the Law Council, by 30 September each year with respect to the measures taken to implement these targets.

In 2018, the targets will be reviewed to reflect the reporting provided by Policy adoptees.

It is intended that by 2020 women are briefed in at least 30% of all briefs and receive at least 30% of the value of all brief fees, in accordance with international benchmarks concerning the retention and promotion of women.

2. Encourage private firms to review their briefing practices to identify any unintended bias, and monitor impact of any changes.

Senior Counsel Protocol

RECOMMENDATION 2.29

The Law Society of Western Australia and the Western Australian Bar Association make submissions to the Supreme Court to adopt a policy (similar to the NSW Bar) explicitly stating in the Senior Counsel Protocol that a flexible or part-time practice is not a barrier to being appointed Senior Counsel.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

None

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

No action other than to encourage all practitioners, full time and part time, in the amalgam and at the Bar, to apply.

RESPONSE OF THE JLSWLC

Discussion

The above recommendation is directed at the Law Society and WABA persuading the Supreme Court to give recognition to the fact that flexible or part-time practice is not a barrier to being appointed Senior Counsel. A statement could be included in the Senior Counsel Protocol.

Part-time employment is not a barrier to appointment as senior counsel in WA. It was noted that the only female appointed silk is employed part-time.

The Supreme Court assumed responsibility for the appointment of Senior Counsel in 2001 when the State Government announced it would no longer be involved in the appointment of Queen's Counsel. The Supreme Court's responsibility for the appointment of Senior Counsel is governed by Practice Direction 10.3 issued by the Supreme Court effective from 1 September 2001. The practice direction sets out the criteria for appointment, the manner and timing of applications, the consultation process (including parties/organisations involved in the consultation process) and the process of appointment.

The 'Senior Counsel Protocol' is a document produced by the WABA to assist the President of WABA to meaningfully participate in the consultation process described in the Practice Direction. This Protocol has also been adopted by the Law Society.

In other Australian States, the process of selection and appointment of senior counsel is governed by Senior Counsel Protocols. This is because there are different systems for the appointment of senior counsel across Australia. Victoria, South Australia, Western Australia, Tasmania and the Northern Territory operate on a system in which the selection of senior counsel is made by the judiciary (usually the Chief Justice of the State) in consultation with the Bar. In Queensland, appointment is made by the Attorney General on the recommendation of the Chief Justice. In the Australian Capital Territory the appointment is by the president of the Bar.

In New South Wales the independent Bar selects its own leaders (although there the Senior Counsel Protocol, which governs the process of selection and appointment of senior counsel, operates to prevent the appointment of any applicant in the selection committee's final selection whose appointment is opposed by the Chief Justice). Rule 17 in the NSW Senior Counsel Protocol (found on the New South Wales Bar Association's website at www.nswbar.asn.au/docs/webdocs/Protocol_14052015.pdf) specifically indicates that a part-time or flexible practice is not a barrier to appointment of senior counsel. It also points out that where applicants practice overseas, have an extensive interstate practice, have been involved in a long-running case, practice in fields which involve substantial chambers practices, had a recent period of maternity or parenting leave, practice part-time for any reason, or where because of the size of the cases, they almost invariably lead, they should note that in their application so that appropriate attention can be given to the special circumstances.

It is important to note that in 2011 the Law Society of Western Australia formed an Ad Hoc Committee to consider the system of appointment of Senior Counsel in this State (based on the Practice Direction). Whilst the report of the committee was critical of some aspects of the system it did not appear to give consideration to amending the Practice Direction to include a statement similar to that in rule 17 of the *Appointment of Silk in New South Wales – 2016 Guide to Practical Aspects*, which provides that a part-time or flexible practice is not a barrier to appointment of senior counsel.

It is noted that there has only been one practitioner in Western Australia, employed on a part-time basis being appointed senior counsel. Therefore it would be an affirmative statement that might encourage others who work flexibly to make application for senior counsel appointment.

As part of the Law Society's current strategic campaign on 'Diversity and Inclusion' it could consider a recommendation to the Supreme Court that the Practice Direction include an explicit statement similar to that in rule 17 of the NSW Senior Counsel Protocol that a part-time or flexible practice is not a bar to appointment of senior counsel.

Recommendations

1. As part of the Law Society's current strategic campaign, 'Diversity and Inclusion', the Law Society to consider a written recommendation to the Supreme Court that Practice Direction 10.3 be amended to include a statement (similar to that in rule 17 of the NSW Senior Counsel Protocol) that a part-time or flexible practice is not a bar to appointment of senior counsel.

Gender bias

In the Office of the Director of Public Prosecutions (ODPP)

GBRR RECOMMENDATION 2.31

The DPP supports women with family responsibilities to progress their careers and:

- a) adopts more flexible conditions for promotion to ensure that working flexibly does not limit career opportunities;
- b) works with the courts to avoid or minimize the listing matters in a way that disadvantages those with family responsibilities; and
- c) adopts support practices to ensure that those working flexibly are afforded the opportunity to conduct complex and lengthy trials in high profile matters.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

There are no specific NARS Options for Consideration directed towards the ODPP (or any particular government employer). However, many of the NARS options directed at 'Law Firms/ Practices and Chambers' are, we suggest, applicable to the ODPP. In particular, those that may be most relevant can be found under the headings of:

- Leadership
- Flexible Work Practices
- Transparency and Accountability
- Workplace Culture

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

No action

RESPONSE OF THE JLSWLC

Discussion

The above recommendations are directed at the ODPP.

In the GBRR some of the key findings about the ODPP were (as at 2013):

- there are more female lawyers than male lawyers in the ODPP but women are concentrated at the junior levels;
- men outnumber women in senior leadership positions;
- there are significant numbers of staff (mainly women) working flexibly;
- women who work flexibly have more limited opportunities for promotion due to restrictions in being able to undertake complex and lengthy trials (the primary criteria for promotion); and
- has both a formal mentoring programme and voluntary mentoring programme for staff.

In the most recent ODPP Annual Report 2014/2015, it was stated that:

The ODPP continues to achieve a workplace of diversity. The ODPP has a Workforce and Diversity Plan 2012-2017, which includes strategies to promote gender equity in the ODPP. In the ODPP there are three Trial Teams that conduct the general prosecutions in the District and Supreme Court. Each of the three ODPP Trial Teams is headed by a Practice Manager/ Senior State Prosecutor and a Consultant State Prosecutor. In 2014/2015, five of those pivotal six positions were occupied by women lawyers.

The ODPP could continue to address the issues that underpin GBRR Recommendation 2.31 by participating in many of the actions suggested for law firms and law chambers throughout this report.

Key actions that might be suitable for the ODPP would include many of the actions suggested in the NARS Report for providing a top-down leadership approach to gender diversity, adopting best practice to achieving gender equity, addressing career barriers for women who work flexibly, committing to improved transparency and accountability regarding gender equity, encouraging workplace cultural change and supporting more women into leadership positions.

Recommendations

The Law Society:

1. Encourages the ODPP to continue to address the issues that underpin GBRR Recommendation 2.31 by inviting the ODPP to participate in many of the actions suggested for law firms and law chambers throughout this report.
2. Considers key actions that might be suitable for the ODPP would include many of the actions suggested in

the NARS Report for providing a top-down leadership approach to gender diversity, adopting best practice to achieving gender equity, addressing career barriers for women who work flexibly, committing to improved transparency and accountability regarding gender equity, encouraging workplace cultural change and supporting more women into leadership positions.

In the State Solicitor's Office (SSO)

GBRR RECOMMENDATIONS 2.32 AND 2.33

2.23 The SSO supports women with family responsibilities to progress their careers and:

- a) adopts more flexible conditions for promotion (rather than just hours and years worked) to ensure that working flexibly does not limit career opportunities;
- b) actively supports and accommodates flexible work arrangements, including providing access to appropriate technology platforms and addressing cultural barriers; and
- c) ensures the existence of good role models (Including those working flexibly), and ensures the women on flexible arrangements access two mentors who are supportive of their arrangement.

2.24 The SSO implement strategies to encourage women to apply for senior positions including through targeted coaching, and formal allocation of sponsors and mentors.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

There are no specific NARS Options for Consideration directed towards the SSO (or any particular government employer). However, many of the NARS options directed at 'Law Firms/ Practices and Chambers' are, we suggest, applicable to the SSO. In particular, those that may be most relevant can be found under the headings of :

- Leadership;
- Flexible Work Practices;
- Transparency and Accountability; and
- Workplace Culture.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

No action

RESPONSE OF THE JLSWLC

Discussion

Recent discussions with senior staff at SSO suggest that it is a workplace very supportive of women who seek to balance family and career responsibilities. However, there is no information that all of the issues that underpin the above recommendations have ceased to be an issue. Therefore, it is recommended that the SSO continue to address the above recommendations.

The SSO could continue to address the issues that underpin GBRR Recommendations 2.31 and 2.32 by the SSO participating in many of the actions suggested for law firms and law chambers throughout this report.

Key actions that might be suitable for the SSO would include many of the actions suggested in the NARS Report for providing a top-down leadership approach to gender diversity, adopting best practice to achieving gender equity, addressing career barriers for women who work flexibly, committing to improved transparency and accountability regarding gender equity, encouraging workplace cultural change and supporting more women into leadership positions.

Recommendations

The Law Society:

1. Encourages the SSO to continue to address the issues that underpin GBRR Recommendations 2.31 and 2.32 by inviting the SSO to participate in many of the actions suggested for law firms and law chambers throughout this report.
2. Consider key actions that might be suitable for the SSO would include many of the actions suggested in the NARS Report for providing a top-down leadership approach to gender diversity, adopting best practice to achieving gender equity, addressing career barriers for women who work flexibly, committing to improved transparency and accountability regarding gender equity, encouraging workplace cultural change and supporting more women into leadership positions.

Conditions of work including salaries and drawings

Gender pay inequity

RECOMMENDATION 2.34

WLWA Priority

Employers focus on gender equity with respect to salaries and drawings by:

- conducting annual equity pay audits to ensure that there is no disparity in salary based on gender;
- ensuring performance reviews and promotions are based on outcomes and efficiency as opposed to billable hours achieved, and genuinely recognise non-billable contributions such as marketing, mentoring and pro-bono work;
- ensuring promotion opportunities are not limited for those on flexible work arrangements; and
- requiring those involved in determining employee performance and pay (including those conducting performance reviews and those setting pay reviews) to complete unconscious bias training to overcome ignorance and unconscious bias.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW FIRMS/PRACTICES AND CHAMBERS (as appropriate)

Leadership (Table 22, NARS page 88)

Adopt best practice to achieving gender equity

- Embed gender diversity into firm strategy (not just HR policy). According to best practice evidence, this would include
 - Setting priority goals.
 - Identifying key strategies for effecting cultural, organisational, policy and practice change to achieve these goals.
 - Identifying and measuring key indicators of success.
 - Publishing and promoting to employees the strategy and progress against desired outcomes.

Flexible Work Practices (Table 22, NARS page 89)

Do not disadvantage people who access flexible work arrangements/parental leave

- Review career development and/or work allocation policies and practices to ensure they do not unintentionally disadvantage or discriminate against those who access flexible work arrangements.
- Monitor the career development opportunities, pathways and promotions of those accessing and not accessing flexible work arrangements/parental leave to identify any unintended barriers to advancement.

Transparency and Accountability (Table 22, NARS page 90)

- Commit to tracking and openly reporting to staff on gender equity trends.

Workplace Culture (Table 22, NARS page 91)

- Review performance/promotion criteria and networking and marketing events to ensure they are 'bias free' and do not unintentionally discriminate against lawyers working part-time or who access flexible working arrangements.

Empowering Women (Table 22, NARS page 95)

- Encourage and support women to participate in training that assists them to promote their skills, apply for positions, negotiate salaries and seek promotions.

Discrimination, Sexual Harassment and Bullying (Table 22, NARS page 94)

- Develop clear and accessible written policies and guidelines on addressing and countering gender discrimination, sexual harassment, and bullying.
- Develop clear and accessible complaint processes in place for gender discrimination, sexual harassment and bullying.
- Conduct training on gender discrimination, sexual harassment and on bullying (including 'bystander' training for those who witness discrimination, sexual harassment or bullying).

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

The Education Committee to consider broadening CPD to cover all aspects of best practice management.

RESPONSE OF THE JLSWLC

Discussion

The above recommendation is directed at employers of lawyers to improve pay transparency, equality of opportunity for promotion and address any gender pay inequality that exists in the legal profession. The reason gender pay gaps or gender pay inequity is such an issue is captured in the following statement from Professor Alan Duncan Director, Bankwest Curtin Economics Centre, Curtin Business School, Curtin University (the Bankwest Curtin Economics Centre partnered with the WGEA to produce the Gender Equity Series titled *Gender Equity Insights 2016: Inside Australia's Gender Pay Gap Report*).

"Gender pay gaps not only challenge basic notions of fairness, they compromise the current and future economic security of women and represent a lost opportunity in human capital investment and potential."

When the 2014 GBRR was published it reported that the gender pay gap in Australia across all sectors in 2013 was 17.5% (based on ABS data about full-time adult average weekly earnings for employees in non-public sector organisations with 100+ employees): see the 'Gender Pay Gap Statistics' from the Workplace Gender Equality Agency (WGEA). There has been some recent marginal improvement in that figure. As at November 2015 the national gender pay gap stands at 17.3%.

In Western Australia, the gender pay gap now stands at is 24.9% (the highest in the country). This contrasts with the gender pay gap in South Australia at 10.3% (the lowest in Australia) and just 6% in New Zealand.

The 2014 GBRR also reported that in 2013, in terms of the median starting salary for new lawyers, there was a 7.8% gap between male graduate lawyers over female graduate lawyers. We have not been able to readily ascertain any current statistics for median starting salary for new lawyers.

The above data provides a broad snapshot of the gender pay gap issue across all sectors and within the legal profession for new lawyers. This data reflects poorly upon the status of economic equality of working women in Australia. It is an issue that, increasingly, engenders considerable public discussion. It is a primary focus for the WGEA.

A useful resource in this area is the first report in the WGEA's Gender Equity Series titled *Gender Equity Insights 2016: Inside Australia's Gender Pay Gap*. It was noted in this Report that increased representation of women on Boards is associated with significant reductions in gender pay gaps. Increasing the share of women on Boards from zero to equal representation is associated with a 6.3 percentage point reduction in the gender pay gap for full-time managers and 7.8 percentage point reduction for part-time managers. Gender pay gaps in male-dominant organisations fall more than those in female-dominant organisations when female Board representation rises. The Report also noted that women remain under-represented on Boards, with the data showing less than one in five Board Directors and one in eight Board Chairs are women; and nearly four in ten organisations have no female representation on their Boards. In 2015, WLWA ran a 'Women on Boards' panel discussion CPD event which was very well attended suggesting that there is significant interest in Board appointments among women lawyers. It is recommended that the Law Society consider hosting a similar event.

The *Fair Work Amendment (Gender Pay Gap) Bill 2015*, a private members Bill before the Federal Parliament, seeks to reduce the gender pay gap by removing legal prohibitions on workers discussing their own pay. At present there is nothing in Australia to prevent employers from including terms in an

employment contract requiring employees to keep their pay details confidential. There is anecdotal evidence to suggest that pay secrecy may be a contributing or facilitating factor to pay inequity. The Bill would amend the *Fair Work Act 2009* to make any term in a modern award, enterprise agreement, or contract of employment that prohibits an employee from disclosing their pay in terms of amount or other information about pay unenforceable. The purpose of the Bill is to reduce the gender pay gap by addressing the culture of pay secrecy. As a private members bill, it will not be debated in Parliament unless the government agrees to it. However, the Bill places pressure on the government to address the issue.

In respect of GBRR Recommendation 2.34 law firms could be encouraged to provide, on a voluntary basis, a summary of annual equity pay audits and an outline of remedial action taken to address any gender disparity in pay. This request should bring a focus in law firms on gender equity in pay. Voluntary compliance by law firms with such a request would set a standard for gender equity in pay, assist in embedding gender diversity into law firm strategy and encourage firms to consider ways to remove any unconscious bias affecting gender equity in pay.

It is proposed that the Law Society seminars focus on, and encourage, gender equity and gender equity strategies that also look at performance reviews, promotions and remuneration. This may encourage legal practice compliance.

Information provided by the Law Society in relation to FWP (see GBRR Recommendations 2.6 and 2.7) mention that promotion opportunities are not limited for those on flexible work arrangements.

The issue of requiring those involved in determining employee performance and pay (including those conducting performance reviews and setting pay reviews) to complete unconscious bias training.

The Law Society can promote the appointment of women on Boards as a measure to address the gender pay gap. As part of this promotion the Law Society may consider holding, either independently or jointly with WLWA, annual seminars on how women can be appointed to Boards.

Recommendations

The Law Society:

1. Should encourage legal workplace employers to focus on gender equity with respect to salaries and drawings by:
 - (i) conducting annual equity pay audits and taking remedial action to ensure there is not disparity based on gender;
 - (ii) managing performance reviews and promotions to ensure they are based on outcomes and efficiency as opposed to billable hours achieved, and there is genuine recognition for non-billable contributions such as marketing, mentoring and pro-bono work;
 - (iii) ensuring promotion opportunities are not limited for those on flexible work arrangements;
 - (iv) ensuring all those involved in determining employee performance and pay have completed unconscious bias training.
2. Provides to employers information that focuses on, and encourages, gender equity and gender equity strategies in any seminar that looks at performance reviews, promotions and remuneration, including unconscious bias training.
3. Should support the passage of the *Fair Work Amendment (Gender Pay Gap) Bill 2015* in that it seeks to improve pay transparency and reduce the gender pay gap by removing legal prohibitions on employees discussing their own pay.

Availability of career support

Mentoring

GBRR RECOMMENDATION 2.35

All employers adopt a formal mentoring scheme for their junior employees. For small firms where an internal mentoring scheme is impractical, the Law Society provides mentors (through a formal scheme linking employees to mentors from other firms) for eligible employees of the small firm.

Refer also to GBRR RECOMMENDATION 2.10

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW PRACTICES AND CHAMBERS (as appropriate)

Mentoring, Sponsorship and Networking (Table 22, NARS page 93)

Enhance mentoring and sponsorship opportunities for women

- Develop in-house or support structured industry-wide mentoring programmes for women:
 - in different law firm contexts (large, medium and small) and at the Bar; and
 - at different stages in women's career.
- Develop sponsorship programmes in their workplace.
- Enhance networking opportunities.
- Support women only and senior lawyer (male and female) networking events including with clients.
- Develop or support women to participate in training that would improve their business development and networking skills.
- Schedule networking and marketing events taking into account lawyers with flexible working arrangements (e.g. consider organising lunch time events, rotating day of events).

BY PROFESSIONAL BODIES (LAW SOCIETIES AND BAR ASSOCIATIONS) (as appropriate)

Mentoring, Sponsorship and Networking (Table 22, NARS page 93)

- In partnership with industry, develop a structured industry-wide mentoring programme for women. This may include:
 - mentoring for young women in large, medium and small firms by experienced women lawyers.
 - peer mentoring across the industry for senior lawyers/barristers.
 - mentoring for senior women lawyers who are looking to progress their career in the industry.
 - peer networking for senior leaders and decision makers (men and women) who can help shift the culture within the legal profession.

- Develop and provide CPD training on how to be an effective mentor/mentee. Mentees will be able to gain new perspectives to advance their career and develop meaningful professional connections and sponsors. Men and women will be able to develop their skills in mentoring women and gain understanding of how to implement a more balanced culture within their workplace that provides equal opportunities for men and women at leadership levels.
- Develop good practice sponsorship programmes and promote their benefits.
- Ensure CPD marketing and networking events are scheduled for different times of the day – and include lunchtime options.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

The Law Society's mentoring programme for practitioners admitted less than five years, is available to employees from firms of all sizes including sole practitioners who have set up their own practice.

ACTION PROPOSED BY LAW SOCIETY

Continue to provide the mentoring programme. Consideration to be given to approaching CCIWA to see if they will offer as a 'member privilege' a discounted rate to members to have access and assistance with practice management.

RESPONSE OF THE JLSWLC

Discussion

This recommendation is aimed at encouraging employers of lawyers to provide formal mentoring schemes for junior employees. Where this is impractical for small employers it is recommended the Law Society provide connections to mentors.

Many, but not all, firms and law schools have informal mentoring schemes for junior employees. The NARS Report identified that mentoring and networking across the profession was not sufficiently strategic or structured. NARS also found the lack of access to mentors was the top-rated factor driving women lawyers' dissatisfaction with their current work. It has also been reported that women also tend to seek out formal mentoring arrangements more than men (refer to the *MHWB Report* which showed women comprised 9 of 11 mentees in 2008 and 11 of 15 mentees in 2009).

An 'ad hoc' mentoring service has been offered by WLWA for a number of years. However, WLWA, which is run by volunteers and without any significant funding, is not as well placed as the Law Society to manage a structured mentoring programme. The Law Society has an overarching role to play in addressing gender diversity through (among other things) providing or facilitating mentoring.

See also the discussion in respect of the following recommendations:

- GBRR Recommendation 2.10 (continuation of mentoring provided by Law Society and WLWA);
- GBRR Recommendation 2.21(c) (Law Society to promote awareness of ability to speak with senior practitioners about ethical and professional misconduct issues);
- GBRR Recommendation 2.22 (Law Society to continue LawCare WA counselling and information service); and
- GBRR Recommendation 2.24 (WABA to implement a formal mentoring programme).

It is noted that the *Mental Health and Wellbeing Recommendations 2016-2020*, includes Recommendation 6 “to establish a Graduate Telephone Advisory Service” and Recommendation 7 that the Law Society continue to offer the mentoring programme for junior lawyers and indigenous law students.

This report recommends that the programme be extended to all practitioners, particularly women, and that programme should be actively and widely promoted.

Recommendations

1. The Law Society to actively, and widely, promote the mentoring programme to members (to both prospective mentees and mentors).
2. See also similar recommendations made in connection with GBRR Recommendations 2.10, 2.21(c), 2.22 and 2.24.

Workplace culture

RECOMMENDATION 2.36

Employers and senior managers actively demonstrate organisational and individual support for an inclusive and diverse culture within their organisation.

Note that this is similar to GBRR Recommendation 2.15.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY LAW PRACTICES AND CHAMBERS (as appropriate)

Leadership (Table 22, page 88 NARS)

Adopt a 'top down' approach to gender diversity

Embrace 'hands-on' leadership in driving gender diversity. According to latest research from McKinsey and Company (2012) on best practice this includes:

- Partners/CEOs investing personal capital and actively role-modelling the desired mind-sets and behaviours.
- Actively promoting the business case that gender diversity matters to the performance and success of the firm/practice.
- Appointing senior and well-respected managers to 'shine the spotlight' on diversity and build change-management capability.

Adopt best practice to achieving gender equity

Embed gender diversity into firm strategy (not just HR policy). According to best practice evidence, this would include:

- Setting priority goals.
- Identifying key strategies for effecting cultural, organisational policy and practice change to achieve these goals.
- Identifying and measuring key indicators of success.
- Publicising and promoting to employees the strategy and progress against desired outcome.
- Calculate the cost of losing and replacing lawyers after several years' investment in training and professional development.

Transparency and Accountability (Table 22, page 90 NARS)

- Collect data on internal leadership levels and attrition.
- Conduct and analyse the results of exit surveys of those leaving their employ to identify any trends or potential attrition drivers. Surveys should include questions relating to gender diversity and flexible work arrangements.
- Consider setting voluntary targets (as opposed to quotas) which will enable them to set goals which are realistic and take into account their particular circumstances. Guidelines and tool kits on gender target-setting are available from the Workplace Gender equality Agency.

- Commit to tracking and openly reporting to staff on gender equity trends.

Workplace Culture (Table 22, page 91 NARS)

- The 'top-down' approach to gender diversity described at 'Leadership' above involves a key phase of tackling mindsets and bringing about cultural change.
- Conduct training or other mechanisms to address 'unconscious bias' from management down.
- Review performance/promotion criteria and networking and marketing events to ensure they are 'bias free' and do not unintentionally discriminate against lawyers working part-time or who access flexible working arrangements.

Role Modelling (Table 22, page 92 NARS)

- Actively promote senior women in the profession as role models.
- These role models should include women and men in different positions (e.g. working full and part-time).

Empowering Women (Table 22, page 95 NARS)

- Encourage and support women to participate in training that assists them to promote their skills, apply for positions, negotiate salaries and seek promotions.
- Facilitate or provide access to high quality leadership programmes, including programmes specifically addressing women and leadership issues.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

- 1) Signatory to the LCA's Diversity and Equality Charter.
- 2) Collation of case studies covering a range of issues from work-life balance, gender, diversity and professional practice.

ACTION PROPOSED BY LAW SOCIETY

Support in principle

RESPONSE OF THE JLSWLC

Discussion

The above recommendation is aimed at employers of lawyers and their senior managers, to bring about support for a more diverse and inclusive legal profession.

The Law Society's role is to publicise its support for this recommendation and assist the profession in embracing cultural change. To express its support, the Law Society has signed up to the LCA's Diversity and Equality Charter.

The Diversity and Equality Charter is as follows:

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.

Accordingly, the Australian legal profession and its members:

- treat all people with respect and dignity regardless of sex, sexuality, disability, age, race, ethnicity, religion, culture or other arbitrary feature*
- create and foster equality through a supportive and understanding environment for all individuals to realise their maximum potential regardless of difference*
- promote and support a strong and fair legal profession comprising, accommodating, encouraging and respecting a diverse range of individuals and views*

As suggested in NARS under the heading of ‘Transparency and Accountability’ in Table 22 (page 90 NARS) it is proposed that the Law Society encourage law firms to become signatories to the Diversity and Equality Charter. The Law Society could then

encourage other signatories, in particular law firms, to record and measure their procedures against a set of diversity and inclusion standards, with an opportunity to share best practice advice and guidance across the profession. This information would enable the Law Society to then track and publically report on trends, successes and areas for improvement.

For the purposes of this report, the above suggestions will assist the Law Society to champion gender diversity as a key issue for the profession, build awareness of the business case for gender diversity and build and promote the evidence base about ‘what works’.

See also the discussion and recommendations under GBRR 2.37 on how the Law Society can play a key role to encourage greater diversity and inclusion within the legal profession.

Recommendations

The Law Society:

1. To encourage law firms to become signatories to the Diversity and Equality Charter.
2. To encourage law firms that become signatories to the Charter to record and measure their procedures against a set of diversity and inclusion standards.
3. To provide law firms that become signatories to the Charter with an opportunity to share best practice advice and guidance across the profession.

The changed culture of the profession

Workplace culture (24/7 mentality)

RECOMMENDATION 2.37

WLWA Priority

The Law Society of Western Australia within 12 months of the publication of this 2014 Review Report:

- a) conducts research and profession-wide forums to discuss and document the steps required of the profession to change the culture away from the current 24/7 mentality (including but not limited to the impact of billing practices);
- b) devises a plan by which the Law Society can assist to facilitate resolving the issue within five years; and
- c) examines the status and publishes progress reports on the implementation of the changes on an annual basis.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (LAW SOCIETIES AND BAR ASSOCIATIONS) (as appropriate)

Leadership (Table 22, page 88 NARS)

Champion gender diversity as a key issue for the profession

- Establish a Gender Diversity Taskforce comprising both senior women and male lawyers and barristers to lead/oversight initiatives in each jurisdiction.
- Law Societies and Bar Associations convene a joint forum within each jurisdiction involving the women's professional associations and representatives from law firms/the Bar to consider findings and workshop priority actions.
- Convene a national forum with representatives from all jurisdictions to identify potential actions that could be taken nationally.
- Publish and promote the results in journals, websites, forums etc in each jurisdiction.

Build awareness of the business case for gender diversity

- Drawing on the latest international and Australian research, publicise and promote the strong business case for gender diversity through publications, websites, forums, social media etc.
- Drawing on the latest international and Australian research, publicise and promote the high financial cost of replacing an employee who leaves after considerable investment in training and professional development.

Build and promote the evidence base about 'what works'

- Commission a review of existing Australian and international literature to identify effective gender equity strategies in law firms/legal practices.
- Commission research into effective gender equity strategies operating in law firms/legal practices across Australia.
- Continually draw on and promote the growing evidence base internationally on gender diversity within business – using the latest research and resources published and/or disseminated by Diversity Council Australia and the Workplace Gender equality Agency.

Transparency and Accountability (Table 22, page 90 NARS)

- Continue to research, monitor, discuss and publicise profession-wide statistics and trends on gender equity in the profession.
- Publicise comparative statistics and trends with other professions.
- Investigate the possibility of being able to report publically on the outcomes of new mandatory reporting requirements on gender indicators for firms with 100+ employees under the *Workplace Gender Equality Act 2012*. Such outcomes relate to:
 - Recruitment and selection;
 - Gender composition of governing bodies;
 - Remuneration;
 - Flexible working arrangements;
 - Consultation with employees on issues concerning gender equality in the workplace; and
 - Sex-based harassment and discrimination.
- Collect and publish ongoing and standardised data on participation rates, attrition rates and leadership levels across the profession (and potentially individual firms).
- In consultation with industry, set voluntary gender equity targets for the profession to aspire to, and report and publically acknowledge firms that reach or exceed these targets over time.
- In consultation with industry, investigate the potential merit and practicality of introducing a voluntary Diversity and Inclusion Charter along the lines of that introduced by the Law Society in England and Wales in 2009. The charter includes activities under eight categories:
 - leadership and vision;
 - employment and staff development;
 - provision of legal services;
 - engagement with staff, clients and the community;
 - policy making and development;
 - monitoring and review;
 - procurement and supplier diversity; and
 - sharing good practice.

- Signatories record and measure their procedures against a set of diversity and inclusion standards, and are provided with an opportunity to share best practice advice and guidance across the profession. The Law Society tracks and publically reports on trends, successes and areas for improvement.
- Provide guidance about the hours lawyers should be working, remuneration, and performance relative to levels in the profession – particularly targeting those new to the profession.

Workplace Culture (Table 22, page 91 NARS)

- Through CPD, develop and provide leadership training for partners/managing partners on organisational cultural change.
- Through CPD, develop and provide leadership training for partners/managing partners on negative cultural aspects and unconscious bias in the workplace.

Role Modelling (Table 22, page 92 NARS)

- Put in place mechanisms to ensure all professional association boards and Councils and their committees are gender-balanced.
- Establish linkages between women lawyers' associations and professional associations in each jurisdiction to jointly develop and implement gender diversity initiatives.
- Ensure all major conferences and forums organised by professional bodies have a good gender balance in speakers/panel members (and actively seek participation by women).

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

- 1) The Law Society's CPD Programme on best practice to include best ways to work with clients and their expectations.
- 2) Unreasonable expectations of employees and its impacts to be the subject of a mental health and wellbeing seminar.

RESPONSE OF THE JLSWLC

Discussion

The NARS Report identified that many men and women in the legal profession are dissatisfied with their work-life balance and, further, that this was a key factor in many women lawyers leaving the legal profession. The long hours and a highly competitive culture of the legal profession can impact negatively on mental health, family commitments and general wellbeing.

Time billing (the main method of charging for legal work) is a long-standing tradition in commercial legal practice. The question of time billing contributing to significant stress and health (both mental and general) issues for lawyers has been the subject of considerable discussion in Western Australia (particularly by the Chief Justice, the Hon Wayne Martin AC) and also in other jurisdictions. However, as noted in the GBRR, it is an issue not yet properly addressed by the legal profession as a whole in this State.

The significantly high attrition rates of women lawyers stem, in part, from the combined negative impact of a work culture still

largely characterised by (among other things) long hours, 'face-time' at the workplace, time billing and limited access to FWP. It is proposed that the Law Society lead and drive the changes in the workplace culture of the legal profession to encourage greater diversity and inclusion within the legal profession as this is the key to improving the retention and advancement of women lawyers.

See the discussion and recommended action under GBRR Recommendation 2.38 regarding the issue of time billing.

The recommendations for action by the Law Society draw inspiration from many of the suggested NARS 'Options for Consideration' outlined above.

For the reasons outlined in the introduction to this report, the Law Society may convene a cross-committee working group called the AWILPWG consisting of approximately 10 - 12 persons with representation from all relevant sub-committees and key staff of the Law Society assigned to this campaign which has a current focus on improving the retention and advancement of women in the profession.

This AWILPWG should meet at least every second month during the period of the strategic campaign. We note that a number of other Law Societies have created a similar group to focus on such issues. For example, see the Law Society of NSW's Diversity and Inclusion Committee, which will oversee their Programme for 'Advancement of Women in the Legal Profession' (approved 18 February 2016) and the Law Society of South Australia's Gender Equity Working Group (established in 2014).

An initial key task for the AWILPWG would be to develop a Gender Action Plan to timetable and focus the Law Society's efforts to address gender inequity in the legal profession. For an example of this, see the document entitled 'Gender Action Plan' developed by Australia Post at auspost.com.au/media/documents/Australia-Post-GAP-2015-Jul15.pdf.

Another key task for the AWILPWG would be developing the content currently available on the Law Society's webpages under the tabs for 'Women Lawyers' and 'Gender Diversity'. The resources should include a Gender Action Plan, FWP protocols and guides, the NARS Report, the GBRR, relevant articles and case-studies on FWP, and links to other relevant external organisations such as the WGEA.

During the period of the strategic campaign, could be to host a summit or forum in Western Australia to raise awareness and promote discussion within the legal profession of key features on the campaign (such as the Gender Action Plan and other strategies that result from discussions or workshops based around NARS). This would address the NARS suggestions aimed at building awareness of the business case for gender diversity and building/promoting the evidence base about 'what works'. For an example, the Law Society of England's website publicised a summit focusing on issues impacting upon the advancement of women in the legal profession which was held on International Women's Day in 2012 (jointly organised by the Law Society of England and Wales and the USA based National Association of Women Lawyers; at www.lawsociety.org.uk/news/press-releases/top-lawyers-set-agenda-for-change-at-international-womens-day-summit/).

The AWILPWG could participate in the creation of Law Society industry awards that give recognition to firms/legal employers for successful strategies introduced by the legal profession that improve diversity and inclusion (this was also suggested in the context of other recommendations). For example:

- best or top three firms able to demonstrate results from introducing effective diversity strategies; and
- best or top three firms for flexible work practices.

For an example of these types of awards see the Queensland Law Society webpage at www.qls.com.au/About_QLS/Equity_Diversity_Awards, where it is stated their awards are “*designed to recognise firms that embrace the changing nature of the profession by promoting positive firm cultures that celebrate staff diversity and accommodate lifestyle needs*”.

Finally, there needs to be some assessment of any gender equity strategies/action taken (or continued) by the Law Society, other organisations or by the profession. It must be ascertained whether the measures taken actually result in increased retention and advancement of women in the profession. If they do not, the Law Society and the profession will need to revise these strategies or actions. If they do, it should be identified which of these are having a measurable impact so they can then be either continued or modified for further implementation. This assessment would need to take place sometime into the future after such measures have had time to take effect. This

proposal may also assist in building and promoting the evidence about ‘what works’ for achieving gender diversity in the legal profession. For this purpose, the Law Society may consider to commissioning a new retention study similar to the 1999 Report jointly commissioned by the Law Society and WLWA, entitled the *Report on the Retention of Legal Practitioners* (Final Report, March 1999). In 2019, it will be the twenty year anniversary of that report and five years since the release of the 2014 GBRR. That timeframe would provide an ideal period after which an assessment could be made of whether the Law Society’s 2016/2017 ‘Diversity and Inclusion’ strategic campaign, and other efforts by the profession, have addressed the issues and recommendations in the GBRR and also whether that has led to any improvements in the retention and advancement of women in the legal profession. It also meets with the five year time frame suggested by GBRR Recommendation 2.37(b).

Once a further retention study has been done by about 2019, the Law Society may be able to report annually on the progress of achieving greater workplace diversity and inclusion, particularly as it applies to the retention and advancement of women lawyers.

Recommendations

The Law Society:

1. To convene a cross-committee working group called the AWILPWG consisting of approximately 10 – 12 persons with representation from all relevant sub-committees and key staff of the Law Society assigned to the 2016/2017 strategic campaign of ‘Diversity and Inclusion’ which is currently directed towards improving the retention and advancement of women in the profession. This working group should meet at least every second month during the period of the strategic campaign (and perhaps remain active until a further retention study is completed in 2019 – see below).
2. Through the AWILPWG, consider developing a Gender Action Plan to timetable and focus the Law Society’s efforts to address gender inequity in the legal profession both during the 2016/2017 strategic campaign of ‘Diversity and Inclusion’ and beyond (until at least 2019).
3. Through CPD, could develop and provide leadership training for partners/managing partners dealing with organisational cultural change, negative cultural aspects and unconscious bias in the workplace.
4. Contribute to the resources on the Law Society’s webpages ‘Women Lawyers’ and ‘Gender Diversity’ by providing links to all relevant existing internal and external resources that promote and facilitate greater diversity and inclusion in the legal profession particularly those directed towards improving the retention and advancement of women in the profession.
5. To host a summit or forum in Western Australia to raise awareness and promote discussion within the legal profession of key features of the ‘Diversity and Inclusion’ campaign which are aimed at improving the retention and advancement of women in the profession.
6. To create industry recognition awards such as:
 - best or top three firms able to demonstrate results from introducing effective diversity strategies; and
 - best or top three firms for FWP.
7. Subject to financial assistance from WABA and WLWA should commission a new retention study similar to the 1999 Report jointly commissioned by the Law Society and WLWA, entitled the ‘*Report on the Retention of Legal Practitioners*’ (Final Report, March 1999). That report should be published during Law Week in 2019 (on the 20th anniversary of the 1999 Retention study and five years after the release of the 2014 GBRR). This Report would include an assessment of the whether the Law Society’s 2016/2017 ‘Diversity and Inclusion’ strategic campaign, and other efforts by the profession, have had a measurable impact upon the retention and advancement of women in the legal profession.
8. Following publication of further retention study in 2019, it is proposed that the Law Society report annually on the progress of achieving greater workplace diversity and inclusion, particularly as it applies to the retention and advancement of women in the profession.

Alternatives to time billing

RECOMMENDATION 2.38

The Law Society of Western Australia conducts research into alternative legal business models to time billing, in particular with respect to the impact of time billing as a charging method on the stress levels and health of legal practitioners.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (LAW SOCIETIES AND BAR ASSOCIATIONS) (as appropriate)

Transparency and Accountability (Table 22, page 90 NARS)

- Provide guidance about the hours lawyers should be working, remuneration, and performance relative to levels in the profession – particularly targeting those new to the profession.

Workplace Culture (Table 22, page 91 NARS)

- Stimulate research and debate on different business models of billing, including the appropriateness and future sustainability of the current billable hours framework for the future.
- Stimulate research and debate on different performance measurement models which include revenue generation not exclusively limited to direct billable hours, such as supervision/mentoring, precedent development and marketing.

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

The Law Society has run CPD seminars on alternative billing methods. A full day CPD seminar on costs was held on 4 March 2015.

Billing methods is one of the issues in the AYLC report (see 2.4) and is addressed in the Law Society's MHWB Report.

ACTION PROPOSED BY LAW SOCIETY

Continue with the CPD seminars.

RESPONSE OF THE JLSWLC

Discussion

In accordance with Recommendations 1 and 2 of the Mental Health and Wellbeing Recommendation 2016-2020, the Law Society continues with, and monitors, programmes and initiatives for mental health and wellbeing.

In the past there have been a number of seminars addressing alternatives to time billing and it is anticipated that there will be more in the future. In addition, costs seminars are held at least annually and generally include discussions on billing. There is an online seminar on billing practices permanently available to practitioners.

There needs to be more discussion within the legal profession around efficiency and specifically 'contribution based performance assessment' vs 'billable hours based performance assessment'. It is noted that the CoL has a forum for its students to discuss billable hours.

This topic might be a suitable subject for a joint research project between the Law Society and Law Schools. It is proposed that the Law Society consider creating an online discussion platform or a dedicated page on the website for this issue.

Recommendations

The Law Society:

1. Possibly in conjunction with the Law Schools, should stimulate research and debate on:
 - (a) different business models of billing, including the appropriateness and future sustainability of the current billable hours framework for the future;
 - (b) different performance measurement models which include revenue generation not exclusively limited to direct billable hours, such as supervision/mentoring, precedent development and marketing; and
 - (c) the effect of time based billing on lawyers' mental health.
2. To publish articles in *Brief* twice a year addressing alternative billing arrangements (one focused on best practice management and one focused on lawyers' health and wellbeing).
3. To continue to conduct, at least annual, seminars on alternative billing arrangements, with a particular focus on the benefits of these arrangements to practitioners' mental health, and the synergy between alternative billing arrangements and practitioners' ethical obligations (i.e. reward for efficient output based performance versus time based billing).
4. To consider a practical component (perhaps incorporating a panel discussion) in CPD seminars addressing how alternative billing arrangements can actually be implemented and demonstrate examples of successful alternative billing methods.
5. To publicise the findings of any report referred to above along with contemporary literature on alternative billing arrangements, using traditional communication (*Brief/ Friday Facts*/emails/online newsletters) and social media (Twitter, Facebook etc.), with the aim of promoting alternative billing arrangements as key to reducing work-place stress for many employees.
6. To consider updating its standard costs kits and engagement letters available to its members via its website to provide for alternative billing arrangements. A dedicated page on its website for alternative billing arrangements, which includes links to available literature, CPD papers and other material relevant to this topic, should also be developed.

Practice exit data

GBRR RECOMMENDATION 2.39

WLWA Priority

The Legal Practice Board routinely seeks information from those who do not renew their practising certificates, broken down by gender and post admission years of experience, as to the reasons for that non-renewal, and provide this information on a non-identifying basis annually to WLWA.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

None specifically addressed to WA Legal Practice Board

BY PROFESSIONAL BODIES (LAW SOCIETIES AND BAR ASSOCIATIONS) (appropriate)

Transparency and Accountability (Table 22, page 90 NARS)

- Continue to research, monitor, discuss and publicise profession-wide statistics and trends on gender equity in the profession.
- Collect and publish ongoing and standardised data on participation rates, attrition rates and leadership levels across the profession (and potentially individual firms).

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

None

RESPONSE OF THE JLSWLC

Discussion

The above recommendation is directed at identifying the causes of attrition of lawyers from the profession in this State.

On a national basis the NARS Report was primarily focused on this issue of attrition and the related issue of re-engagement of the legal profession. In particular, it aimed to explore why women lawyers leave their jobs, and, in some cases, the profession altogether. The NARS involved a survey of 84 lawyers who had left the profession. A number of these lawyers were also the subject of in-depth interviews. The findings showed that culture, leadership and working conditions are vital 'push' and 'pull' factors leading to workplace movements and retirements.

In order to address these 'push' and 'pull' factors NARS puts forward many options for consideration which build the business case for greater diversity and flexible working within the legal profession.

It is accepted that the possibility that there may be different, or additional, 'push' and 'pull' factors that impact upon workplace movements and retirements in this State. Therefore there is a need for more data and qualitative information as to which lawyers leave their jobs or practice altogether and their reasons for doing so.

In gathering this information, it is proposed that an 'exit survey' could be sent to non-practising lawyers (following more than 12 months of non-renewal of a practice certificate). The Law Society could give consideration to the use of exit surveys to ascertain the reasons for movement of lawyers within the profession. The information could be publicised to the profession. The importance of data collection around these issues and promoting exit surveys to the profession so that there is general awareness that this information is being sought in order to address attrition issues within the profession. It is also possible that lawyers who are leaving the profession may feel more comfortable providing this type of information to the Law Society.

Recommendations

The Law Society:

1. To design and implement an online exit survey for lawyers who leave their jobs and/or the legal profession to identify the 'push' and 'pull' factors leading to workplace movements and retirements. This survey should be accessible through the Law Society's website.
2. To publicise and promote to the legal profession the importance of participation in the online exit survey as a means of data collection around attrition issues in order for the Law Society to address attrition issues within the profession.
3. To encourage members to complete the online exit survey if they change employer or leave the profession.
4. To ask the LPBWA to send a letter to any lawyer not renewing their practising certificate asking them to complete the online survey.
5. To publish results of the online survey annually in *Brief*.
6. To invite leaders in the profession to a workshop run by the Law Society outlining the results of the survey, the business case for dealing with attrition and promoting many of the strategies contained within this Report that are aimed at addressing attrition issues associated with factors of culture, leadership and working conditions (note – this could form part of the summit or day-long forum suggested for the legal profession under GBRR Recommendation 2.37(5)).

Also see also GBRR Recommendation 2.12 which recommends the Law Society to:

- collect data from law firms and legal agencies on internal leadership levels and attrition;
- conduct exit surveys from time to time which address issues that might factor into a woman's decision to leave practice. Surveys should include questions relating to gender diversity and flexible work arrangements; and
- conduct and analyse the results of such exit surveys of those leaving their employment to identify any trends or potential attrition drivers.

Mental health and wellbeing

GBRR RECOMMENDATION 2.40

The Law Society of Western Australia continues to prioritise the development and delivery of educational and informational strategies aimed at addressing mental health and wellbeing issues in the profession, and make those strategies available to law students and graduates via University law schools and Practical Legal Training providers.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

Flexible Work Practices (Table 22, page 90 NARS)

- Conduct research and examine the effects of work life balance tensions on the mental health of legal professionals.
- Develop a national website along the lines of the Canadian Bar Association's Work Life Balance Resource Centre, divided into the following categories:
 - Striking the balance;
 - Health and wellness;
 - Young lawyers;
 - Women and law;
 - Advancing diversity; and
 - Podcasts

The Resource Centre contains more than 350 links to resources for individual practitioners and law firms on how to strike a balance between professional and personal life.

Workplace Culture (Table 22, page 91 NARS)

- Through CPD, develop and provide leadership training for partners/managing partners on negative cultural aspects and unconscious bias in the workplace

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

1. CPD seminars on mental health and wellbeing.
2. Resources in relation to mental health and wellbeing on the website.
3. The Law Society has previously approached the LPBWA in relation to mental health and wellbeing matters being a mandatory component of CPD.

ACTION PROPOSED BY LAW SOCIETY

Continue with current mental health and wellbeing seminars.

RESPONSE OF THE JLSWLC

Discussion

As noted above (see GBRR Recommendation 2.38) that in December 2015 the Council of the Law Society endorsed the Mental Health and Wellbeing Recommendations 2016-2020 in accordance with Recommendations 1 and 2, the Law Society will continue with, and monitor, co-ordinate ongoing programmes and initiatives for mental health and wellbeing.

Recommendation

No further action.

Women leaders in the law

RECOMMENDATION 2.41

The Law Society of Western Australia:

- a) Sets, publishes and encourages employers to meet voluntary gender targets and goals for women in leadership positions in the legal profession, with the targets and goals to be first published in the next 12 months;
- b) Requests employers report to the Law Society on progress in relation to those targets and goals; and
- c) Collates the information received from employers, and from this information publishes profession-wide statistics and trends on equity in the profession.

The above recommendation is very similar to GBRR Recommendation 2.12.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

BY PROFESSIONAL BODIES (Law Societies and Bar Associations)

Transparency and Accountability (Table 22, NARS page 90)

- Continue to research, monitor, discuss and publicise profession-wide statistics and trends on gender equity in the profession.
- Publicise comparative statistics and trends with other professions.
- Investigate the possibility of being able to report publicly on the outcomes of new mandatory reporting requirements on gender indicators for firms with 100+ employees under the *Workplace Gender Equality Act 2012*. Such outcomes relate to:

- Recruitment and selection;
 - Gender composition of governing bodies;
 - Remuneration;
 - Flexible working arrangements;
 - Consultation with employees on issues concerning gender equality in the workplace; and
 - Sex-based harassment and discrimination.
- Collect and publish ongoing and standardised data on participation rates, attrition rates and leadership levels across the profession (and potentially individual firms).
 - In consultation with industry, set voluntary gender equity targets for the profession to aspire to, and report and publically acknowledge firms that reach or exceed these targets over time.

ACTION PROPOSED BY LAW SOCIETY

Refer the recommendation to the JLSWLC with a request to set targets and this recommendation then be revisited.

RESPONSE OF THE JLSWLC

Discussion

The above recommendation is very similar to GBRR Recommendation 2.12 dealing with promotion by the Law Society of voluntary gender targets for women in practice.

As part of setting voluntary gender targets, employers would be asked to report to the Law Society in relation to those targets and goals and then collate the information received from employers. The Law Society can use this information to publish profession-wide statistics and show the trends on gender equity in the profession.

Recommendations

The Law Society:

1. Consider establishing voluntary targets within the first six months of this report being adopted. The targets must be approved by the Law Society Council.
2. Promote the appointment of women to Boards as a measure to address the gender pay gap. As part of this promotion the Law Society may consider holding, either independently or jointly with WLWA, annual seminars on how women can be appointed to Boards.
3. To provide incentives for employers meeting with, or exceeding, voluntary gender targets, by establishing industry awards for such firms that exceed the voluntary targets, and best firm to demonstrate results from introducing effective gender diversity strategies.

Gender targets for employers

GBRR RECOMMENDATION 2.42

Employers commit to:

- a) reporting both internally to staff and externally to the Law Society on gender targets and goals; and
- b) devising an implementation plan to set out how improvements with respect to meeting gender targets and goals will be made, and publicising this plan to staff.

The above recommendation is very similar to GBRR Recommendation 2.13 and complementary to GBRR Recommendation 2.41 above.

CORRESPONDING NARS OPTIONS FOR CONSIDERATION

Leadership (Table 22, NARS page 88)

Adopt a 'top down' approach to gender diversity

- Embrace 'hands-on' leadership in driving gender diversity. According to latest research from McKinsey and Company (2012) on best practice this includes:
 - Partners/CEOs investing personal capital and actively role-modeling the desired mind-sets and behaviours.
 - Actively promoting the business case that gender diversity matters to the performance and success of the firm/practice.
 - Appointing senior and well-respected managers to 'shine the spotlight' on diversity and build change-management capability.

Adopt best practice to achieving gender equity

- Embed gender diversity into firm strategy (not just HR policy). According to best practice evidence, this would include:
 - Setting priority goals;
 - Identifying key strategies for effecting cultural, organisational, policy and practice change to achieve these goals;
 - Identifying and measuring key indicators of success; and
 - Publicising and promoting to employees the strategy and progress against desired outcomes.
- Calculate the cost of losing and replacing lawyers after several years investment in training and professional development.

Flexible Work Practices (Table 22, NARS page 89)

Do not disadvantage people who access flexible work arrangements/parental leave

- Review career development and/or work allocation policies and practices to ensure they do not unintentionally disadvantage or discriminate against those who access flexible work arrangements.
- Monitor the career development opportunities, pathways and promotions of those accessing and not accessing flexible work arrangements/parental leave to identify any unintended barriers to advancement.

Transparency and Accountability (Table 22, NARS page 90)

- Collect data on internal leadership levels and attrition.
- Conduct and analyse the results of exit surveys of those leaving their employ to identify any trends or potential attrition drivers. Surveys should include questions relating to gender diversity and flexible work arrangements.
- Consider setting voluntary targets (as opposed to quotas) which will enable them to set goals which are realistic and take into account their particular circumstances. Guidelines and tool kits on gender target-setting are available from the Workplace Gender Equality Agency.
- Commit to tracking and openly reporting to staff on gender equity trends.

Mentoring, Sponsorship and Networking (Table 22, NARS page 93)

Enhance mentoring and sponsorship opportunities for women

- Develop in-house or support structured industry-wide mentoring programmes for women:
 - in different law firm contexts (large, medium and small) and at the Bar.
 - at different stages in women's career.
- Develop sponsorship programmes in their workplace.
- Enhance networking opportunities.
- Support women only and senior lawyer (male and female) networking events including with clients.
- Develop or support women to participate in training that would improve their business development and networking skills.
- Schedule networking and marketing events taking into account lawyers with flexible working arrangements (e.g. consider organising lunch time events, rotating day of events).

CURRENT LAW SOCIETY INITIATIVES AND PROGRAMMES

None

ACTION PROPOSED BY LAW SOCIETY

Support in principle

RESPONSE OF THE JLSWLC

Discussion

Refer to the above discussion in connection with GBRR Recommendations 2.12, 2.13 and 2.41 which relate to the issue of voluntary gender targets.

This recommendation is aimed at employers of lawyers reporting on gender targets and other related goals and making changes to better meet with those gender targets and goals.

Whilst many large firms and government bodies which employ teams of legal practitioners will have developed gender targets and implementation plans, smaller organisations may require additional support to assist with the development of relevant goals and plans. The Law Society's resources, guidelines and toolkits on gender target setting would also be available to government departments for additional assistance.

The NARS discussion and recommendations in respect of role modeling and empowering women as a key component of achieving gender targets and goals is strongly supported.

To support the gender target implementation plans of employers, it is recommended that the Law Society offer leadership programmes tailored for women, including confidence building and self-promotion. These programmes should be available face to face, by webinar and online to accommodate all women.

Recommendations

The Law Society:

1. To make available appropriate guidelines and toolkits on gender target setting when it publishes/communicates any voluntary targets set by the Law Society.
2. To consider ways it could provide incentives for employers meeting with, or exceeding, voluntary gender targets, by establishing industry awards for such firms that exceed the voluntary targets, and best firm to demonstrate results from introducing effective gender diversity strategies.
3. In support the gender target implementation plans of employers, to:
 - regularly offer leadership programmes tailored at women, including building confidence and self-promotion; and
 - prioritise the actions recommended in this Report in respect of coaching and mentoring.





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The Law  **Society**[®]
— OF WESTERN AUSTRALIA —
The voice of the legal profession in Western Australia

Final Directions Paper

Recommendation Timeframe

THE **ESSENTIAL** MEMBERSHIP
FOR THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

Law Society Final Directions Paper Recommendation Timeframe

| 1 st half of 2017 | 2 nd half of 2017 | 1 st half of 2018 | 2 nd half of 2018 |
|--|---|--|--|
| <ul style="list-style-type: none"> Establish AWILPWG Establish voluntary gender targets Link to reporting requirements as required by the Workplace Gender Equality Agency Lobby State Govt regarding Cth Legal Services Directions 2005 Encourage the appointment of silk to include practitioners working part-time YLC to meet with Law School Societies regarding gender bias issues YLC to review the AYLC guidelines Approach LPBWA and CoL to gather and review data on gender balance in graduate employment | <ul style="list-style-type: none"> Exit surveys for women leaving the profession Encourage legal practices to develop written policies, guidelines and complaints process regarding sexual harassment | <ul style="list-style-type: none"> Promote firms that assist employees with childcare services Develop Gender Action Plan to address gender inequity Consider discussion about alternatives to billable hours and <i>Brief</i> articles | <ul style="list-style-type: none"> Key actions for ODPP and SSO re gender diversity Create industry recognition awards Consider new retention study with WABA + WLWA Research with Law Schools on alternatives to time billing |
| Ongoing | | | |
| <ul style="list-style-type: none"> Encourage heads of jurisdiction to implement family friendly court hours CPD Broaden the mentoring programme Promote Diversity and Equality Charter Continue to provide the LawCare WA service | | <ul style="list-style-type: none"> Continue promotion of the Dial-An-Angel service Encourage diversity reps in large firms to form an inter-firm diversity reps group Promote LCA's National Equitable Briefing Policy in conjunction with WABA, develop marketing approach to encourage women to the Bar | |

Glossary of terms used in this report

| Term | Meaning |
|----------------|--|
| CEO | Chief Executive Officer |
| GMA | General Manager – Advocacy |
| GMCS | General Manager – Corporate Services |
| GMLM | General Manager – Law Mutual (WA) |
| GMP | General Manager – Programmes |
| AWILPWG | Advancement of Women in the Legal Profession Working Group |
| YLC | Young Lawyers Committee |
| ERC | Employee Relations Committee |

Recommendation Commencement Time Frames

| | Recommendation | Responsible | Year |
|---|--|------------------------|-------------|
| Establish Advancement of Women in the Legal Profession Working Group | | | 2017 |
| 1st half of 2017 | <p>1. To convene a cross-committee working group called the AWILPWG consisting of approximately 10-12 persons with representation from all relevant sub-committees and key staff of the Law Society assigned to the 2016/2017 strategic campaign of 'Diversity and Inclusion' which is currently directed towards improving the retention and advancement of women in the profession. This working group should meet at least every second month during the period of the strategic campaign (and perhaps remain active until a further retention study is completed in 2019 – see below).</p> | CEO | |
| Voluntary gender targets | | | 2017 |
| 1st half of 2017 | <p>1. Consider establishing voluntary targets within the first six months of this report being adopted. The targets must be approved by the Law Society Council. Also consider encouraging legal workplace employers to focus on gender equity with respect to salaries and drawings by:</p> <ul style="list-style-type: none"> (i) conducting annual equity pay audits and taking remedial action to ensure there is not disparity based on gender; (ii) managing performance reviews and promotions to ensure they are based on outcomes and efficiency as opposed to billable hours achieved, and there is genuine recognition for non-billable contributions such as marketing, mentoring and pro-bono work; (iii) ensuring promotion opportunities are not limited for those on flexible work arrangements; (iv) ensuring all those involved in determining employee performance and pay have completed unconscious bias training. | GMA – Refer to AWILPWG | |
| 2nd half of 2017 | <p>2. Consider conducting exit surveys from time to time which address issues that might factor into a woman's decision to leave practice. Surveys should include questions relating to gender diversity, flexible work arrangements, childcare issues, workplace movements and retirements.</p> <ul style="list-style-type: none"> • To publicise and promote to the legal profession the importance of participation in the online exit survey as a means of data collection around attrition issues in order for the Law Society to address attrition issues within the profession. • To ask the LPBWA to send a letter to any lawyer not renewing their practising certificate asking them to complete the online survey. • To publish results of the online survey annually in <i>Brief</i>. • Conduct and analyse the results of such exit surveys of those leaving their employment to identify any trends or potential attrition drivers. • To invite leaders in the profession to a workshop run by the Law Society outlining the results of the survey, the business case for dealing with attrition and promoting many of the strategies contained within this Report that are aimed at addressing attrition issues associated with factors of culture, leadership and working conditions (note – this could form part of the summit or day-long forum suggested for the legal profession under GBRR Recommendation 2.37(5)). • Depending upon the outcome of such a survey, the Law Society could also look into options for partnering with a childcare centre to provide members with better access to quality childcare services based in the city. | GMA – Refer to AWILPWG | |

| | Recommendation | Responsible | Year |
|------------------------------|---|--------------------------------------|-------------|
| 1 st half of 2017 | 3. Provide a link on its website to reporting requirements on gender indicators for firms with 100+ employees under the <i>Workplace Gender Equality Act 2012</i> for outcomes which relate to: <ul style="list-style-type: none"> Recruitment and selection Gender composition of governing bodies Remuneration Flexible working arrangements Consultation with employees on issues concerning gender equality in the workplace Sex-based harassment and discrimination. | GMCS | |
| | Government Departments | | 2017 |
| 1 st half of 2017 | 1. Approach WABA to jointly lobby the WA State Government to adopt a policy similar in content and purpose to the Commonwealth's Legal Services Directions as it relates to the briefing of women by State agencies. | CEO – President Law Society and WABA | |
| Sexual harassment | | 2017 | |
| 2 nd half of 2017 | 1. To encourage legal practices to develop written policies and guidelines on addressing and countering gender discrimination, sexual harassment and bullying (and also develop and promote a 'best practice' model for their use). | GMA to refer to AWILPG and ERC | |
| | 2. To encourage legal practices to develop complaint processes to deal with workplace gender discrimination, sexual harassment and bullying including provisions for bystanders (and also develop and promote a 'best practice' model for their use). | GMA to refer to AWILPG and ERC | |
| Workplace Culture | | 2017 | |
| 1 st half of 2017 | 1. As part of the Law Society's current major strategic campaign, 'Diversity and Inclusion', the Law Society to consider a written recommendation to the Supreme Court that Practice Direction 10.3 be amended to include a statement (similar to that in rule 17 of the NSW Senior Counsel Protocol) that a part-time or flexible practice is not a bar to appointment of senior counsel. | GMA to refer to Courts Committee | |
| Young lawyers | | 2017 | |
| 1 st half of 2017 | 1. YLC should review the draft AYLC guidelines and ensure that they contain minimum employment standards for graduates, address salary equity/ gender pay inequity (which starts at the graduate level) as well as working conditions. These guidelines should include a requirement that, at a minimum, employers conduct a gender pay equity audit at least every two years. Upon the completion of the review it should consider: | GMA | |
| | 2. Requesting the LCA circulate the AYLC guidelines to constituent bodies for comment/approval. | | |
| | 3. Publish any guidelines approved, advertised and endorsed by the LCA. | | |
| | 4. Report to the Law Society Council by no later than the end of 2016 on progress of this recommendation. | GMA | |
| | 5. Write to the College of Law enquiring as to whether they survey their students and alumni annually in an attempt to gather data on gender balance in graduate employment and if they do would they provide it to the Law Society on an annual basis. | GMA | |
| | 6. Write to the LPBWA to encourage them to collect any data regarding graduate recruitment and ask if they would provide it to the Law Society on an annual basis. | | |

| | Recommendation | Responsible | Year |
|-------------------------------|---|--|--------------------------|
| Government Departments | | | 2018 |
| 1 st half of 2018 | 1. Consider key actions that might be suitable for the ODPP and SSO would include many of the actions suggested in the NARS Report for providing a top-down leadership approach to gender diversity, adopting best practice to achieving gender equity, addressing career barriers for women who work flexibly, committing to improved transparency and accountability regarding gender equity, encouraging workplace cultural change and supporting more women into leadership positions. | GMA to refer to AWILPWG | |
| Childcare | | | 2018 |
| 1 st half of 2018 | 1. To promote information provided by employers of lawyers who provide, subsidise or otherwise facilitate access to childcare services for their employees. | GMP and GMCS | |
| Workplace Culture | | | 2018 |
| 1 st half of 2018 | 1. Developing a Gender Action Plan to timetable and focus the Law Society's efforts to address gender inequity in the legal profession both during the 2016/2017 strategic campaign of 'Diversity and Inclusion' and beyond (until at least 2019). | GMA to Refer to AWILPWG | |
| 2 nd half of 2018 | 2. To create industry recognition awards such as: <ul style="list-style-type: none"> • best or top three firms able to demonstrate results from introducing effective diversity strategies; and • best or top three firms for FWP. | GMA - AWILPWG to develop a proposal to be referred to the Honours Committee for consideration. | |
| | 3. Subject to financial assistance from WABA and WLWA should commission a new retention study similar to the 1999 Report jointly commissioned by the Law Society and WLWA, entitled the 'Report on the Retention of Legal Practitioners' (Final Report, March 1999). That report should be published during Law Week in 2019 (on the 20th anniversary of the 1999 Retention study and five years after the release of the 2014 GBRR). This Report would include an assessment of the whether the Law Society's 2016/2017 'Diversity and Inclusion' strategic campaign, and other efforts by the profession, have had a measurable impact upon the retention and advancement of women in the legal profession. | GMA to refer to AWILPWG | |
| | 4. Following publication of further retention study in 2019, it is proposed that the Law Society report annually on the progress of achieving greater workplace diversity and inclusion, particularly as it applies to the retention and advancement of women in the profession. | GMA to refer to AWILPWG | TBC – subject to 3 above |
| | 5. Possibly in conjunction with a Law School, should stimulate research and debate on: <ul style="list-style-type: none"> (a) different business models of billing, including the appropriateness and future sustainability of the current billable hours framework for the future; (b) different performance measurement models which include revenue generation not exclusively limited to direct billable hours, such as supervision/mentoring, precedent development and marketing; and (c) the effect of time based billing on lawyers' mental health. | GMA to refer to AWILPWG and Costs Committee to consider | |
| | 6. To publicise the findings of any report referred to above along with contemporary literature on alternative billing arrangements, using communication (such as, <i>Brief</i> , Friday Facts, emails, online newsletters, twitter, Facebook etc.), with the aim of promoting alternative billing arrangements as key to reducing work-place stress for many employees. | GMA and GMCS | |
| 1 st half of 2018 | 7. The Law Society to consider discussion about alternatives to 'billable hours' model of rewarding workplace performance, which relies upon 'face time'. | GMA to refer to AWILPWG and Costs Committee | |

| Recommendation | | Responsible | Year |
|------------------------------|--|---|------------------|
| Mentoring | | | 2018 |
| 1 st half of 2018 | 1. Considers offering broader mentoring programmes for up to 12 months. | GMA | |
| 2 nd half of 2018 | 2. Monitors the effectiveness of mentoring programmes and prepare an annual report should be provided to Council about the effectiveness of the programme. | GMA | |
| Childcare | | | 2017-2018 |
| Ongoing | 1. To contribute to current public debate about the need for better access to childcare services. It should also be prepared to publicly challenge assumptions about gender roles and caring responsibilities in order to address stereotypes that women should be the primary carers of children (and with primary responsibility for care of the elderly). | CEO and President | As required |
| Court hours | | | 2017-2018 |
| Ongoing | 1. The Law Society to continue to encourage the heads of jurisdiction to support and implement the change. | JLSWLC and Executive | |
| CPD | | | 2017-2018 |
| Ongoing | <ul style="list-style-type: none"> FWP Re-integration training and return to work Alternative billing and benefits to mental health Unconscious bias training for employees and employers Diversity and Inclusion, including the promotion of women lawyers on boards. | GMP | |
| Young lawyers | | | 2017-2018 |
| Ongoing | 1. Executive to continue to meet annually with the Deans of all Law Schools, including with a view to obtaining data that differentiates employment outcomes on the basis of gender and that 'gender bias' in graduate recruitment be a standing agenda item so any such issues can be addressed. | CEO | Annually |
| | 2. YLC to meet regularly with the Law Schools' student societies in order to be informed about any 'gender bias' issues. | GMP to refer to YLC | Annually |
| | 3. Should obtain the most comprehensive data about graduate employment and then report upon whether the employment of graduates broadly reflects the gender ratios of final year law students. If it does not, the Law Society may consider whether any strategies are needed to address any possible gender bias in recruitment of law graduates. | CEO (Executive and CEO meets with the Deans of Law Schools) | Annually |
| | 4. YLC should consider producing a written guide for employers regarding the legal and professional conduct obligations that exist in respect of recruitment processes (e.g. Compliance with EO legislation and <i>Fair Work Act</i> provisions). | GMA and GMCS | |
| | 5. Review and collate this data or identify alternative sources of data and have the results published on the Law Society website. | GMP and GMA | Annually |
| Mentoring | | | 2017-2018 |
| Ongoing | 1. Continues the mentoring programmes however, these should not be limited to junior practitioners. | GMA | |

| | Recommendation | Responsible | Year |
|------------------------------|--|--|-------------|
| Workplace culture | | | 2018 |
| Ongoing | 1. In relation to the Diversity and Equality Charter: <ul style="list-style-type: none"> • Encourage law firms to become signatories; • Encourage signatories to record and measure their procedures against a set of diversity and inclusion standards. • To provide signatories an opportunity to share best practice advice and guidance across the profession. | CEO/GMCS/GMA/ GMP/GMLM | |
| | 2. To provide information to the profession to raise awareness about the ability to speak with a senior practitioner and/or Senior Counsel in relation to ethical and professional misconduct issues via the Senior Advisors Panel. | GMCS | |
| | 3. To continue the LawCare WA service and actively promote the service at every available opportunity. | GMA | |
| | 4. Increase promotion of the 'Dial-an-Angel' service available to members. | GMP and GMCS | |
| Diversity | | | 2018 |
| Ongoing | 1. To encourage large law firms to appoint their own diversity representative and offer them access to online resources via the Law Society's website to support them in that role. | GMCS – Promote on all platforms | |
| | 2. To encourage the diversity representatives in large firms to form an inter-firm diversity representatives' group in order to share information at regular meetings. The Law Society could offer to host those meetings in order to keep abreast of gender equity issues as they arise in large practice environments. That information can be fed back to the Law Society via the (proposed) AWILPWG. | GMA to liaise with AWILPWG on the feasibility of establishing a an inter-firm diversity representatives' group | |
| Model Briefing Policy | | | 2018 |
| Ongoing | 1. Should promote on its website best practice examples of adoption of the Equitable Briefing Policy. | GMA to refer to AWILPWG | |
| | 2. Contact the WABA about how best to develop a marketing approach to attract women to the Bar and to assist them to obtain briefs (eg. joint training/networking sessions with male barristers). | GMA to refer to AWILPWG | |
| | 3. Encourage private firms to review their briefing practices to identify any unintended bias, and monitor impact of any changes. | GMCS – Promote on all platforms | |