

After Ada

a new precedent for women in law



The Law Society of New South Wales

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*Ada Evans
(1872 – 1947)
Australia's first
woman law graduate*

The Law Society of New South Wales
ACN 000 000 699
170 Phillip Street
Sydney, NSW 2000
Australia
Phone (02) 9926 0333
Fax (02) 9231 5809
DX 362 Sydney



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President's Message



The Law Society is pleased to announce the launch of the paper **'After Ada – a new precedent for women in law'** which was adopted by the Law Society Council on 19 September 2002. The paper aims to critically evaluate the role and experience of women in the legal profession at the beginning of the 21st century and provides an agenda for change.

In her recent paper¹ Moira Rayner, Acting Sex Discrimination Commissioner, Western Australia suggested the concept of ethical organisations as the way of moving the debate forward in the 21st century. Such a shift would normalise concepts such as 'rights' and 'EEO' and would give us new ways to talk about and effect change:

If we had ethical workplace policies, it would be unethical to force women out of work, fail to provide the necessities of a decent life for children and relatives. It would be unethical to consider a worker as less than a human being with relationships and a life beyond your particular workplace.

An important aspect of this change is the need to bring about a shift in workplace culture and to normalise Equal Employment Opportunity (EEO). In recent years we have developed a new vocabulary about civil society, social capital, corporate citizenship and ethical organisations. I propose that we look at the continuing problem of discrimination against women and other equity groups in the light of a philosophical move towards more ethical workplaces. A framework of ethical workplace cultures would mean that ethical organizations would be responsive to discrimination, among other issues, moving EEO from the fringe to the mainstream of workplace culture.

This paper provides a detailed analysis of the experiences and expectations of female solicitors. It highlights the need for a crucial shift in corporate culture and management practice towards the ethical delivery of legal services. Such a shift involves consideration of lifestyle and work/life balance issues which affect the profession as a whole.

I encourage you to consider this paper and its recommendations.

I extend my thanks to the following Law Society staff for their work on this paper: Shanthini Govindasamy, Sue Bertram and Donna Bain.

Kim Cull

President

INTRODUCTION

The year 2002 marks the centenary of the graduation of Australia's first female law student. It is a significant milestone in the evolution of the Australian legal profession.

This year also signals the commencement of almost thirty years of anniversaries as the Australian legal profession celebrates the following events:

- In 1905 Ms Flos Greig became the first Australian woman to enter the legal profession when she was admitted as a barrister in Victoria
- In 1924 Ms Marie Beuzeville Byles became New South Wales' first female solicitor when she graduated from the University of Sydney Law School; and
- In 1925 Mary Kitson and Dorothy Sommerville established the first female legal partnership in Adelaide.²

The examples above illustrate how women have overcome the difficulties of a normally cautious and conservative profession to set precedent in order to establish their chosen career in the legal profession.

*Many lawyers are risk identifiers, not risk takers. Our training in stare decisis (precedent) makes many believe that you can only find the future by studying the past. We walk through life backwards.*³

Precedent almost ended Ada Evans' attempts to enter the legal profession. As Australia's first law graduate, Ada completed her studies at the University of Sydney in 1902. However, she was not the first woman to enter the legal profession. That honour fell to Ms Flos Greig who became a barrister in Victoria in 1905. Unfortunately, Ms Evans had the misfortune to want to practise in a jurisdiction that discriminated against women. For 16 years she lobbied authorities in Sydney and London to register as a student-at-law. Their response was "[t]here is no precedent." It was not until the passage of the *Women Legal Status Act* in 1918 that Ms Evans was able to register as a student-at-law. In 1921 she secured admission as a barrister to the Supreme Court of New South Wales. Although admitted, Ms Evans did not practise at the Bar. She took the view that so much time had elapsed since her graduation that she was incapable of practising and did not wish "women's standing in the profession to be undermined by a show of incompetence."⁴

Mary Kitson's and Dorothy Sommerville set new precedent when they established Australia's first female partnership in 1925. They resorted to this option, after Mary married and became Mary Tenison Wood. At this stage, her male partners decided that they preferred not to work with her.

100 years after Ms Evans' pioneering move, the profession is critically evaluating the progress of women in the legal profession.

Although the growth in the number and proportion of women in the legal profession has been dramatic, particularly in the last twenty years, there is disquiet in the profession that women are clustered at the entry-level ranks of their profession. In a speech to launch Australian Women Lawyers in 1997, the Honourable Justice Mary Gaudron of the High Court of Australia questioned the progress of women in the profession:

Where has this progress got us: we are under-represented at the level of senior partnerships; we are under-represented among the leading advocates..., we are under-represented in the judiciary.

This paper will cover the following topics:

- A gender profile of the solicitors of New South Wales
- The experience of women in the legal profession
- The expectations of women in the legal profession

- The workplace of the 21st century
- Ideas and suggestions to achieve change; and
- Potential for change in the workplace for all lawyers.

A discussion about the low number of female partners¹ raises a number of questions including:

- Are women 'pushed' out of the partnership career path because of certain characteristics of the profession?
- Are women pulled to other careers that allow them to achieve their personal and professional goals?; and
- Are the expectations of women in the profession unique or are they common to both men and women in the profession? That is, "Is this a gender issue or a generation issue, or a potent combination for the two?"⁵

This paper will discuss the range of factors that influence the lives of women in the legal profession. There are a number reasons why a discussion about this topic is important. In 1995, the Keys Young report identified the following consequences for clients, women lawyers, the profession and also possibly, for the way law is practised if the issue of women in the profession was not addressed:⁶

- "A waste of time and resources devoted to legal training"
- A lack of 'vigour' and diversity in the profession
- A 'rigidity of structure' in the management of collegiate relations
- A loss of talent
- A lack of alternative models of service delivery
- A lack of role models for women lawyers
- A lack of female mentors
- A lack of established networks for women lawyers and barristers
- A lack of critical mass of women necessary to make it easier for women in the low ranks of the profession and to change the legal corporate culture; and
- Law firms and legal practice are still structured in a way that suits men rather than women.

As Justice Kirby said in a speech to the Victorian Women Lawyers' Association in August 2001, "[t]he perspective of women should be available in full proportion to the judiciary, the bar, and the legal firms, corporate lawyers, the law schools and the government departments of Australia. It needs to be available to the whole community which the law serves."⁷

The findings of this paper indicate that there is a continued increase in the number of women partners both in absolute terms and as a proportion of partners within the whole practicing profession.

When women are partners their earnings are on par with those of men. However as solicitors, women still earn on average less than men. Last year women's salaries were on average 76% of men's salaries. This year that ratio has improved, with women now earning 82% of the salaries that men earn. For solicitors who have been admitted for less than one year there was a gap of \$8,200 in favour of male solicitors.

One-third of solicitors aspire to be partners, with this proportion decreasing as age increases. In all age groups (except those over 50 years of age), men are more likely than women to aspire to be partners. Reasons cited by women likely to prevent them achieving their aspirations to become partners include: commitment to family responsibilities, lack of appropriate female role models, lack of mentoring and gender.

Whilst there are a number of examples of positive initiatives throughout the industry, there is still much work to be done to ensure that the legal profession retains talented female professionals.

¹ Throughout this paper "partner" in the Australian data refers to a person who holds an unrestricted practising certificate and who is principal (salaried or equity) or sole principal of an organisation or firm. It is acknowledged that the comparison between Australian and US/UK partners may not always be an exact equivalent.

THE GENDER PROFILE OF THE PROFESSION

Below is a summary of the profile of the profession. It highlights the dramatic changes in the gender profile of the profession in the last twenty years.

New South Wales

On 1 August 2002, there were 6,143 female solicitors holding current New South Wales practising certificates (37% of the practising profession). Of these 7% were partners. Of the women practising in the profession, 66% were in private practice, 14% practised in the Government sector and 17% in the corporate sector.

A more detailed profile of the profession is set out in Appendix 1.

National

In 1998/1999, there were 7,293 female lawyers throughout Australia (29% of the practising profession). Of these, 16% were working proprietors and working partners of unincorporated businesses.⁸

In 1999, female students constituted 57% of the undergraduate law population⁹ and 55% of students enrolled in practical legal training programs in New South Wales.¹⁰

International

The gender profile of the solicitors of New South Wales is not unique. Writers in many countries have remarked on the phenomena of the 'glass ceiling' or 'glass wall.'¹¹

In New Zealand, 12% of partners are women (although women hold many of the major legal and administrative positions in New Zealand).¹²

In South Africa, although women now make up 50% of students enrolled in practical legal training programs and constitute 19% of the profession, they make up 14% of partners.¹³ It is interesting to note that this represents a higher ratio of women as principals than many other jurisdictions.

Research by the American Bar Association's Commission on Women in the profession found that in the United States of America female lawyers made up 23% of all lawyers in 1995, but only comprised 14% of law firm partners.¹⁴ In the year 2000, women's presence in the profession had increased to 30% of all lawyers and 16% of partners.¹⁵ Similarly low proportions of women occupy leadership positions in the profession with little change between 1995 and 2000: from 19% of full professors at law schools in 1995 to 22% in 2000; from 8% of law school deans to 11% in 2000 on some measures. Other indicators of the low proportion of women in leadership positions throughout the profession include 19% of Federal Court judges, 20% of state civil judges; 22 % of ABA House of Delegates members; and 32% of the members of the ABA Board of Governors. In 2000 women's median salary was 73% of that of men's.

In the United Kingdom, the Law Society of England and Wales reported that female solicitors now made up 37% of solicitors holding practising certificates (there were 109,553 solicitors on the roll as at 31 July 2001). An article in the Gazette published by the Law Society of England and Wales reporting the findings of the Law Society's annual statistical report concluded that "serial problems for women remain: while 52% of men are partners, just 24% of women are. Nationally there is pay inequality for female trainees who on average earn £17,944 compared to £18,807 for male trainees."¹⁶

The experience of women in the legal profession

There may be environmental factors in private practice that prevent or discourage women from becoming partners in private practice. This section will explore the following factors:

1. Income
2. Hours of work
3. Work arrangements
4. Career satisfaction
5. Work/life balance; and
6. Harassment, discrimination, intimidation and bullying

1. Income

Since 1996/97, solicitors responding to the annual practising certificate survey have been asked to indicate their real take home income (i.e. after all expenses but before income tax). The following information reports the income of male and female solicitors in full time employment in the private firm sector.

In the survey responses for 2002 – 03 (the income year 2001 – 02), male and female solicitors reported significantly different income levels irrespective of type of practitioner, location of practice and years in practice. The average income for women was \$75,700 compared with the male average income of \$92,000. Twenty-seven percent of female solicitors reported an income of \$50,000 or less. This compares with 19% of men.¹⁷ This is a modest improvement from the previous year where women on average earned 76% of men's wages, relative to 82% of men's wages this year.

More detailed information about the income profile of the profession is set out in Appendix 1.

The difference between the incomes of men and women is most apparent when analysed according to time in practice. While the income gap between male and female solicitors ranges between \$4,100 and \$8,200 when solicitors have been admitted for less than 10 years, the gap increases to \$19,800 for solicitors admitted for more than 30 years. For solicitors who have been practising for less than 1 year, the salary difference was \$8,200, relative to \$7,300 the previous year. A comparative table of the income of solicitors over their careers is set out in Appendix 1.

Although women earn the same as their male colleagues when they are partners, they earn on average \$6,200 less than their male colleagues in private practice when holding other positions in the firm. A table detailing the incomes of solicitors in private practice is set out in Appendix 1.

The largest gaps between the incomes of male and female solicitors occur in private practice and corporations. The gap between the median income of male and female solicitors in private practice is \$17,700, \$18,100 for solicitors in corporate practice and \$8,600 for solicitors in government practice as set out in Appendix 1.

The apparent discrimination of women in the profession in terms of income is likely to be well known in the profession. Although remuneration is not the sole motivator and in many cases is not a person's priority, in the absence of recognition through promotion or quality of work, remuneration can become the dominant factor. As female solicitors are not promoted at the same rate as their male colleagues, experience more harassment and discrimination, and receive low levels of remuneration (in comparison with their male colleagues) this may drive female solicitors to seek more satisfying (and financially rewarding) careers in other organisations (such as corporations).

2. Hours of work

The Family Responsibilities Study in 1998 found that respondent solicitors worked longer hours than the average working hours identified by the Australian Bureau of Statistics. Female respondents worked an average of 49 hours while male respondents worked an average of 52 hours. Average working hours by all women employed full time in 1996 was 39 hours and for men employed full time, 44 hours.

An analysis of the hours reported in the 2001 – 02 practising certificate survey reveals that one third of partners work between 51 – 60 hours per week. In contrast the majority of employed solicitors (44%) work between 41 – 50 hours a week. The hours worked by partners, sole practitioners and employees in private practice are illustrated in Appendix 1.

A recent survey by TMP Worldwide found that while 75% of people in the legal industry considered that they were not addicted to work, 92% of them reported that they voluntarily arrive early, leave late or work through breaks during the work day and that for more than 46% of solicitors this occurred at least twice a week, for 27% it occurred three to four times a week and for 27% every day of the week. The motivation for working these hours was cited as the chance to catch up on work (50%), and recognition from a boss or co-workers (42%).

A recent study by the ACTU found that excessive hours created a ‘mummy track.’¹⁸

The mummy track was well in evidence through this study, and did not easily intersect with long hours jobs. The greater the proportion of long hours jobs in any labour market, the more carers are forced into ‘mummy tracks’ that keep them away from long hours and lock them into second class jobs. Further, when their male partners hold long hours jobs, women are more strongly pushed into ‘accommodation’ strategies in the labour market – taking casual work, short term jobs, and lower status jobs that give them ‘flexible’ availability to work around their partners, remembering that many of their hours are unpredictable. There are, therefore, multiple factors arising from long hours that foster and embed the secondary labour status of mothers, and push them towards a ‘mummy track’.

The study concluded that the long hours are embedding systemic disadvantage for women. The report suggests that this occurs for two reasons. First, because women’s partners are increasingly working longer hours, the greater share of carer’s responsibilities falls on their female partners who spend more time on “childcare, domestic work and household administration [and] management”. Second, the growth in hours standards in some workplaces means that those with more responsibility [traditionally mothers and daughters] – are increasingly unable to meet the standard of the long hours workplace. Many drop back to part time work, change jobs, or leave the labour market.

Apart from the impact on careers, long working hours also produces fatigue that can have an adverse impact on productivity. Research in the United Kingdom found that “17 hours without sleep produces higher level of impairment than those associated with 0.05 per cent blood alcohol concentration”.¹⁹ Going without sleep is now the norm. A recent report released by the United States Department of Labor found that the average adult worker is deprived of at least 365 hours of sleep per year (the equivalent of 15 and half days).²⁰

Consultants working in industries attempting to address the issue of fatigue suggest that “workers experiencing fatigue over extended periods of time tend to develop and adopt coping strategies in an attempt to minimise the effect of the fatigue on their performance”.²¹ They advise that employers can expect to see more of the following workplace habits:

- Working more slowly
- Checking work more thoroughly
- Using memory cues or reminders
- Relying on fellow workers; and
- Choosing to carry out less critical tasks.

That is, workers slow down their pace of activities and decision making to accommodate their reduced level of function.

The effect of the profession's culture of long hours on women in the profession is multi-faceted. First, the Family Responsibilities Study indicated that while most men had a full time partner at home taking care of the range of domestic responsibilities, most female solicitors were not in this advantageous position.²² This means that female solicitors not only have a full suite of work responsibilities, they also carry a full load of domestic responsibilities. If a workplace requires that at least half a person's waking day is spent at the office, there is simply not enough time for female solicitors to discharge all their other responsibilities.

Second, the most recent generation of female solicitors (like the male colleagues of their generation), may have concluded that spending so much time at work, with little time devoted to non work activities, whether they be family responsibilities or other interests, is not a recipe for a balanced life. As will be discussed later in this report, the newest generation of workers does not necessarily hold the 'work' value above all other values.

The impact of a change of values and the demands on women's time may have the following effects on a female solicitor's career in the profession. First, she may elect to work part time. While this in and of itself should not have a deleterious effect on her career, there is a still a view in the profession that part time work is the 'mummy track' which is a different path to that leading to partnership. Second, she may not be prepared to commit the hours that the firm perceives as the necessary prerequisite to becoming a partner. Many female solicitors simply do not have the time to spend most of it at the office. Third, she may elect to change professions or place of employment where hours of service is not the sole or dominant measure of a person's worth to an organisation. In all three scenarios, the profession loses the input of many women at all levels of their profession.

3. Work arrangements

The legal profession is particularly inflexible, and unwilling to consider flexible work options. Valuable employees are sidelined if they cannot commit to the incredible hours. The culture needs to change. Lawyers are adversarial with their colleagues, rather than team players. (respondent, Family Responsibilities Study 1998)

The challenge of managing work is not just an issue for solicitors with carer's responsibilities. The issue arises for solicitors wishing to undertake study, those who want to play sport, those who want to do volunteer work, those who want to have holidays and those who simply want to go home during daylight hours. The pressure on single solicitors without family commitments is evidenced in this comment (also recorded in the Family Responsibilities Study):

There is little consideration of non-married employees' out of work commitments. If you are not married you are expected to be available to work out of hours and on weekends.

The Family Responsibilities Study found that the range of flexible work options available to solicitors varied between sectors. The option most often available to solicitors in large law firms is part time work (36%) and paid parental leave (15%). In comparison small firms are more likely to offer flexible holiday rosters (34%), working from home (20%) and part time work (15%). Government employees can most often access flexitime (15%), time in lieu arrangements (15%), paid leave to care for sick dependants (12%). Solicitors in corporate practice can most often access paid leave to care for sick dependants (15%), flexitime (14%), accumulation of RDOs/ADOs (11%) and flexible holiday rosters (11%).

Respondents to the 2002 Remuneration and Work Conditions Survey reported on flexible work options available to them. The top five options available were: family emergency leave (59%), flexible hours (48%), sick leave for family commitments (44%), part-time work (43%) and telecommuting (30%). A detailed table describing all the available options is set out in Appendix 1.

Of those organisations offering paid maternity leave the average was 9.6 weeks, an average of 5.5 weeks of paid paternity leave and 8.2 weeks for paid leave for adoptive parents.

Flexibility has become the mantra of the newest generation of workers. These workers want flexibility for several reasons. One, they have every expectation that they can have a life which includes work and a range of other interests. They do not necessarily draw a heavy black line between work time and 'other' time, (that is, they see no reason why they cannot shop during normal business hours and work at midnight). They do expect they will have time for both. Second, those with family responsibilities expect their workplaces will accommodate the other demands on their time and provide them with the flexibility (without the guilt) to discharge these responsibilities. Research has shown that while firms have adopted part time work as the most popular flexible work arrangement, the low rates of uptake by women and the lack of women at the senior levels (either during or following their child rearing years), indicates that this arrangement is not sufficient to retain female solicitors in the private profession. It may be that while the arrangement on paper is part time, in effect part time workers (male and female solicitors) are expected to be available at all times (and are in effect working the equivalent of a full time week although only being paid as part time employees). The possible 'exploitation' of part time workers and the effect on career paths of part time work, may prompt women to reconsider whether private practice offers the type of work arrangement which is best suited to their circumstances.

4. Career satisfaction

According to the 2002 Remuneration and Work Conditions survey almost two in three solicitors (65%), male and female, are very satisfied or satisfied with their position. This is very similar to the 2001 survey results. The areas of dissatisfaction (either very dissatisfied or dissatisfied), were very similar to those reported in the previous year's survey and include:

- Lifestyle balance (30%)
- The management environment (28%)
- Salary (28%)
- Mentoring (26%)
- Number of hours worked (24%); and
- Flexible hours (21%).

Respondents were also asked to indicate whether they intended to change jobs in the next twelve months. Around three out of four of those who were dissatisfied or very dissatisfied with their jobs stated that it was likely or very likely that they would change jobs in the next twelve months. Only 16% of those who were satisfied or very satisfied with their jobs indicated that they were intending to change jobs.

Most of those who intended to change jobs indicated that they were intending to take up a position in a law firm (38%). The next most popular option was a solicitor in a corporation (18%). Many respondents were not sure (12%). Almost 1 in 10 respondents (10%) indicated that they would leave legal practice.

The most frequently cited reasons given by solicitors for leaving their current position were:

- Better salary (61%)
- Quality/type of work (48%)
- Better work environment (44%)
- Organisational culture (40%)
- Lack of promotional opportunities (38%)
- I need a change (31%); and
- Not consistent with lifestyle choice (23%).

In 1996, research by the Victoria Law Foundation reported the key findings on overall satisfaction in law firms were:

- Overall job satisfaction depends more on position in the firm than gender
- Principals and consultants were the most satisfied by a significant margin
- There was no significant difference between the overall job satisfaction of male and female employee solicitors; and
- The most satisfied group was female principals and consultants and the least satisfied group was female employees.²³

The research in Victoria and New South Wales does not indicate any clear pattern of difference between the satisfaction levels of male and female solicitors.

The Victoria Law Foundation report found that:

- The similarities between the responses of men and women strongly outweigh the differences
- The differences found were consistent with the propositions that:
 - Women are more concerned with maintaining a balanced life in which work, career and other factors have proportionate weight; and
 - Women tend to have a more critical view of components of job satisfaction and of the corporate environment.²⁴

The survey seemed to indicate, “that females and males are equally dissatisfied with the private firm environment... [and] that the culture and environment of most private law firms is not currently conducive to the needs of male or female employees.”²⁵

There is some difficulty interpreting the career satisfaction data. It would appear on the face of the results, that most of the profession is satisfied with their careers. As career satisfaction is a measure of a range of complex interwoven factors, it is not surprising that the profession is generally satisfied.²⁶ On the whole, they are well remunerated (particularly in comparison with the general population); they have status as a professional group and they are generally involved in interesting work. However, there are strong indicia that there are segments in the profession that are not satisfied. These include the number of women who do not stay in the private profession, the number of women who are not part of the senior ranks in the profession and the rates of discrimination and harassment. It may be that the profession is experiencing the ‘boiling frog’ syndrome.²⁷ That is, there are several generations of solicitors in the profession who are accustomed to the structure of work as it is. They may have little experience of the structure of work in other businesses. In the absence of other information, the profession may not know what is available, what is ‘normal’ in other workplaces and they therefore assume that their workplace is an ideal (or normal) workplace. It may be that female solicitors are aware of the other workplace options available and are more willing to leave the traditional workplace of the private law firm for something else which provides the work environment that they prefer. It may be that although they are not strongly dissatisfied with the careers in the private profession, the options available elsewhere are simply more attractive.

5. Work/life balance

In the 2000/2001 Practising Certificate Survey, respondents were asked how satisfied they were with their work/life balance. The results reveal little difference between male and female respondents. Over 65% of female solicitors were either very satisfied or fairly satisfied in comparison to 62% of male solicitors. Marginally, more male solicitors (19%) than female solicitors (18%) were very dissatisfied or fairly dissatisfied with their work/life balance. That report also found that:

- People working part-time were more likely to be satisfied with their work/life balance (78%) than those working full-time (62%)
- Those working in government (71%), corporate (71%) and community legal centre practice (66%) were more satisfied than their peers in private practice (61%).

The levels of satisfaction also vary within private practice. While employees and partners (62%) were more likely to be very satisfied or satisfied, this only applied to 54% of sole practitioners. The level of satisfaction with work/life balance also varied according to the size of the firm. The most satisfied were solicitors working in firms of 1 – 4 partners (74%), followed by solicitors in firms of 11 – 20 partners (66%), solicitor in firms of 2 – 4 partners (65%), then solicitors working in firms of 20 or more partners (62%). Ironically, the higher proportions of solicitors who are dissatisfied or very dissatisfied occur at the same level at the small (1 – 4 partners) firms (21%) and the big end of town (20 or more partners) where 18% of solicitors are either very dissatisfied or dissatisfied.

The 2002 Remuneration and Work Conditions survey asked respondents whether they thought that their job allowed them the flexibility that they needed to balance work and family life. One in two respondents agreed, or strongly agreed with this statement. Men (54%) were more likely than women (48%) to agree with this statement.

The issue of work/life balance was recently the subject of research by the Law Society of Western Australia. That study concluded that although most respondents were “positive about certain features of their work in the legal profession... [t]here were general concerns raised about... ‘management’ issues.”²⁸ The study also found that “quality of life issues emerged strongly. Respondents generally did not agree that the legal profession was a supportive work environment...” [They did not] believe themselves able to manage the level of job stress and pressure or balance their work and family responsibilities. Those with young families, in particular, found the long hours stressful.”²⁹

This research indicates that solicitors are keenly aware of the need to balance work and life want to work in an environment and be supported by management culture that shares this value.

In order to encourage the legal profession in this area the Law Society's inaugural EEO Awards in 2002 include a Special Award for Work/Life Balance. This award recognizes legal firms and organizations who have well developed work/life policies and strategies in place and can demonstrate the impact of these strategies.



6. Harassment, discrimination, intimidation and bullying

Female solicitors responding to the 2000/2001 Practising Certificate Survey reported that almost one quarter of them (37%) had experienced harassment or discrimination due to their gender, in the course of practice as a legal practitioner. This compares with the response rate from male solicitors of 3%. Detailed tables about harassment and discrimination statistics is set out in Appendix 1.

It appears the discrimination and harassment statistics have not improved over time. In the 1998 – 99 practising certificate survey, 17% of women reported that they had experienced unlawful discrimination in the course of practice as a solicitor. Male solicitors reported discrimination at the rate of 4%.³⁰

The workplace for women continues to be a difficult one. The 2002 Remuneration and Work Conditions Survey found that 1 in 5 solicitors experienced bullying, and over 1 in 10 experienced either harassment (14%), or discrimination (12%). Around one third of the profession who experienced this behaviour stated that it occurred frequently. The survey also found that in the case of discrimination and harassment, women's experience of these incidents was much higher than their male colleagues which is illustrated by the graphic in Appendix 1.³¹

A survey carried out by TMP from December 2001 to February 2002 found that 18% of employees say their boss and co-workers bully them. The survey of 5,000 employees indicates that the biggest bullying bosses are found in the legal profession with 33% of employees in the legal sector saying they were experiencing bullying tactics from their employers.

These figures indicate that many women in the legal profession experience a difficult workplace on a daily basis. This environment may prompt women to reconsider whether they want to work in a profession that behaves in this way. Female solicitors may choose to leave the profession and seek a career elsewhere or elect to take a 'low profile' position in a firm where they do not attract unwanted attention.

Summary

Writers of socio-political theory talk about migration in terms of 'push' and 'pull' factors. These encompass a range of social, political, economic and environmental elements, some of which drive people away from a previous location (push) and others which attract people to a new location (the pull factors).³² The same complex dynamic is occurring in the legal profession. While there are factors that would seem to drive women out of the profession (before they are able to attain the seniority) such as discrimination and harassment and the lack of flexible work options, there are factors which might pull female solicitors into other businesses, such as better remuneration packages and flexible work options.

The challenge for the profession is to determine which of those factors within the profession's control it wants to modify so as to attract and retain female solicitors.

THE EXPECTATIONS OF WOMEN IN THE LEGAL PROFESSION

The expectations of law graduates

One of the questions that is being asked in the profession is whether lawyers enter the profession with expectations that are not satisfied by their experience which then prompts them to choose different career paths. In an attempt to answer this question, the Centre for Legal Education has carried out research to ascertain what the career expectations are of students who are about to or have recently entered the profession. In its research of graduates in 1991, 1995 and 1997, the Centre found that more than one third (35%) of law graduates (male and female) expect to work only in private practice and a further 23% wished to work in either the private or public sector. Students were also asked to indicate where they wanted to be working in three years' time. Seventy two percent of those working in private practice indicated that they would still be there in three years' time.³³ However, "in terms of actual numbers... more graduates intended to leave, than to enter, the private legal profession."³⁴ The report also records the five most important factors given to explain their career choice. These were: intrinsic interest in the job, quality of training, suits talents, opportunity to use legal knowledge and security of employment.³⁵

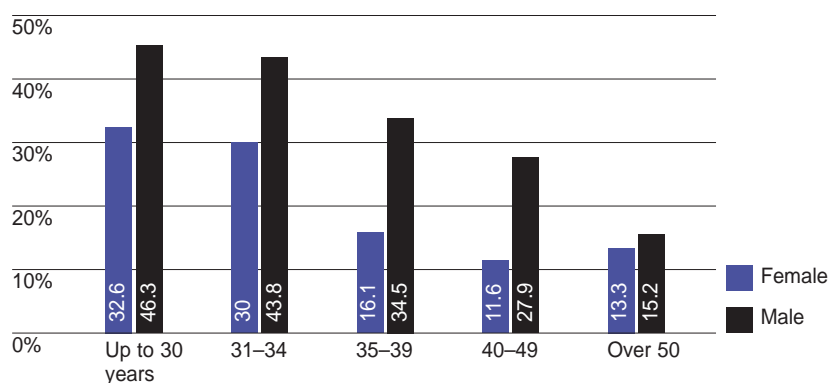
Research in Western Australia found, however, that a number of respondents "concluded that the law had been a poor career choice given their interests and aptitudes."³⁶ That report recommended that "the law profession [needs] to be clear about the attitudes and aptitudes it believes are necessary for good lawyers. By introducing improved vocational counseling at school level and more rigorous selection processes for entry to law school, it is anticipated that the profession could improve its diversity and identify more successfully those young people most likely to enjoy the practice of law and to succeed at it."³⁷

It would appear from the research that graduates about to enter the profession have every expectation of succeeding in their chosen career and enjoying their career choice. While there is certainly scope to improve the quality of career information available to aspiring solicitors, there are management characteristics of the profession which may deter even the most inspired, suited and ambitious solicitor.

Partnership aspirations

The 2001 Remuneration and Work Conditions Survey sought to test the theory that female solicitors may not share the career aspirations of their male colleagues (and therefore it is inappropriate to measure the success of women in the profession against the benchmark set by their male colleagues). The results of the 2002 survey confirm this theory. The survey found that one-third (31%) of the survey group aspired to be a partner in a law firm and that males are more likely than female solicitors to have partnership aspirations in all age groups except those over 50 years (see chart overpage).

Partnership aspirations (Yes)



Of those individuals who reported having partnership aspirations:

- 41% would like to become a partner in a firm which has more than 20 partners
- 35% reported it is likely or very likely they will be made partner; and
- The most popular time frame for partnerships is within the next 2 – 5 years (42%) or after 5 years (38%).

Respondents to the survey were also asked to identify the reasons why they thought it was unlikely or very unlikely that they would become partners. The reasons cited by male and female respondents were very different. While both groups identified the attitude of partners and lack of appropriate experience as the major reasons, more than one half of women identified commitment to family/personal responsibilities (50%) compared with one-quarter (23%) of men. Of those identifying gender as a reason for not attaining partnership, all but one were women. A detailed table describing these reasons is set out in Appendix 1.

Those solicitors who did not aspire to be partners gave the following reasons:

- Not consistent with lifestyle choice (64%)
- Do not want to work the hours required by partners (55%)
- Too stressful (42%)
- Do not want financial, legal or management responsibilities (40%)
- Better career options elsewhere (33%)
- Not interested in building / social networking (31%)
- Do not like the partnership model as a business structure (31%); and
- Not relevant to my workplace (26%)

The results of the New South Wales study echo the results of a similar study conducted in the United Kingdom, that found that 74% of male legal assistants aspired to be partners compared with 55% of female legal assistants.³⁸ Those working in more profitable law firms were more likely to aspire to partnership than those working in the less profitable firms.

It is important to know why many female solicitors set their career ambitions differently than their male colleagues. If female law graduates enter the profession with the same set of expectations as their male peers, something occurs in the early years of their professional careers that prompts many to rethink their career ambitions. Personal values (desire to start a family), management behaviour and peer behaviour probably all influence a female solicitor's decision. While many will voluntarily 'opt out' of the profession, it is still incumbent on the profession to examine the extent to which its own practices and culture make it difficult for women to retain a foothold in private practice which is secure enough for them to reach the senior ranks of their profession.

CHANGES IN THE WORKPLACE

The legal profession like other professions and industries is experiencing a paradigm shift of a type and magnitude probably not seen since the industrial revolution. Rapid and dramatic changes in the fundamental elements of society raise significant issues for the legal profession. At a seminar delivered by Dr Dale Spender in March 2001, she remarked that:

*Individuals are having difficulty planning and organising their lives – even advising their children. Governments are having difficulty coming to terms with the weightless economy, and the end of national boundaries. And businesses have to restructure themselves – or more precisely, they have to continually renew themselves – just to keep up.*³⁹

The legal profession is not quarantined from these changes. In the last ten years the profession has experienced:

- A growth in the size of the legal profession
- Matching growth in the number and proportion of female solicitors
- Diversification of the areas of legal work
- Extension of Australian firms into overseas markets
- Relaxation of jurisdictional boundaries
- Increased concerns about managing knowledge, information technology, human resources and capital; and
- Fundamental shifts in government policy and regulation such as national competition policy, mutual recognition, the new tax system, corporate governance and so on.

The legal profession is as subject to changes in the socio-economic and political environment as other occupations and businesses. As noted earlier in this report, some of the issues surrounding work conditions may not be so much an issue of gender as of generation. Some of the key changes in the work environment since World War II which have an impact on the legal profession are described in this section.

Women in the workforce

In May 2001, women made up 56% of the Australian workplace. Forty-five percent of women in the workforce were working a part time basis (constituting more than two-thirds of the part time workforce – 71%).⁴⁰ The participation rate for women in the workforce is now 56%, which is up from 46% in 1995 and 42% in 1990.⁴¹

The growth in the number (and proportion) of women in the workforce has been one of the striking features of the changing workplace (particularly since World War II). “Due to the increase in the number of women working outside the home, their attitudes about work have become a significant influence on the work ethic in the contemporary workplace.”⁴²

Multiple generations

“The Gen X and Gen Y employees want to belong to a bigger community, but they also want the freedom to do what they want to do. This has brought work/life issues into sharper focus. Also, for example, the increase of women in the workplace had brought new pressures to work design. If you want good women to stay with you, then you have to make that possible.”⁴³

The workplace of the 21st century is filled with workers of different generations and different values:⁴⁴

- There are those born between 1945 and 1964 (the baby boomers) who have an expectation of either retiring early and living off their hard earned savings or working until they don't want to (irrespective of their age).
- The generation X (those born between 1965 and 1979) – the latch key generation are independent, they are cynical and are keen to balance work and family so that their lives are more satisfying and balanced.
- The generation Y born after 1979 have every expectation that their flexible lifestyles will be a seamless joining of work and the other aspects of their lives. They will shun traditional work schedules and structures and find work (wherever it is) that is on the cutting edge.

The challenge for law firms (and the challenge faced by all businesses) is to manage the expectations of this diverse workforce.

Technology

The advent of the Internet, intranet, email, home business phones and faxes and mobiles all offer opportunities for organisations to use flexible work practices, allowing employees to work at a time and place (not necessarily the office) that is suitable for them.

Technology offers opportunities for employers and employees to develop flexible work arrangements. Telecommuting and flexi-place programs can reduce commuting time, giving employees more time to spend with their families or participate in other non-work activities.

However, the same technology also presents a threat, possibly tying employees to the workplace even when they are travelling, at home or on holidays and “opens up the possibility of abuse if employers require homework above and beyond normal working hours or establish modern home sweatshops.”⁴⁵ The tales of fifty families recently interviewed for the ACTU study of the impact of hours of work, found that many professional employees (e.g. engineers) were expected to have their mobile phones on for 12 hours a day, while they were in their cars and even if they went home early.⁴⁶

Ethical employment practices

In the course of their practice solicitors are bound to act ethically and it follows that they should act with a similar honesty and fairness in employment relationships. The integrity of solicitors and the reputation of the profession requires that solicitors practise law in an ethical way. The agenda for change towards more ethical organisations involves the adoption of ethical workplace policies and employment practices. This section will explore some of the options that could be pursued by professional associations, employers and employees to bring about meaningful and sustained change in the practices and culture of the legal profession so as to attract and retain female solicitors in the private profession so that an equitable proportion of those women attain senior ranks in the profession.

Recognising the issue

There has been concern (most recently articulated by the ABA Commission on Women in the Profession), that the profession is not paying the issue of women in the profession sufficient attention. The following extract from that report summarises this view:

The problems are compounded by the lack of consensus that there are in fact serious problems. In the ABA Journal's 2000 poll, only about a quarter of female lawyers and three percent of male lawyers believed that prospects for advancement were greater for men than for women. Most attorneys equate gender bias with intentional discrimination, and the contexts in which they practise, produce few overt examples. Yet a wide array of research finds that women's opportunities are limited by factors other than conscious prejudice. Major barriers include unconscious stereotypes, inadequate access to support networks, inflexible workplace structures, sexual harassment, and bias in the justice system.⁴⁸

The same inconsistency or lack of awareness is apparent in NSW. In the inaugural 2001 Remuneration and Work Conditions Survey, the researchers found that "[o]verall, the majority of participants reported they are either satisfied or very satisfied with their position. The level of autonomy and client contact both rated highly in terms of participant satisfaction, while participants were least satisfied with their salary and the management environment."⁴⁹ The results of the 2002 survey are consistent with these findings.

Similarly, the 2000/2001 Practising Certificate Survey found that 63% of the profession were either very satisfied or satisfied with their work/life balance. This is despite the fact that the same group of practitioners reported that they worked an average 51 hours a week and that 32% of them worked more than 51 hours a week and reported high levels of discrimination and harassment.

It would appear (as discussed earlier) that the profession is failing to recognise that there are flaws in the profession that mitigate against women securing senior positions within it. Further, the profession also needs to recognise that it is incumbent on the profession to identify and fix the flaws or risk losing a significant segment of their profession. As the professional association, the Law Society has a leadership role to assume to assist the profession to work through these complex issues to ensure substantive and sustainable change.

Time

It has been suggested that time will rectify the imbalance between men and women in the senior ranks of the profession. However, in the first report of the ABA Commission on Women in the Profession, submitted by the Chair, Hillary Rodham Clinton in 1988, she predicted that “time alone is unlikely to alter significantly the under-representation of women in law firm partnerships, judicial appointments, and tenured faculty positions.” Research in Australia and overseas confirms the accuracy of Hilary Clinton’s prediction. For example, the NSW Keys Young Report found that when they compared female and male lawyers admitted to practice in the same years, three, five and ten years post admission, women lawyers had attained partnership at a considerably lower rate than that of their male counterparts. They concluded that ‘[t]his finding casts considerable doubt on the theory that sufficient numbers and time will eventually bring about equity in women’s and men’s status in private law firms.’⁵⁰

The Law Society will need to inform the profession that the belief – that time will fix the gender profile – is a fallacy, and that decisive action needs to be taken to effect change.

Managing the transition back to work

Although more than 75% of women return to full time employment once their child is six months old, most employers do not believe that women on paid maternity leave will return to the workplace.⁵¹ Consultants working in this field consider that one of the issues is to assist employers and employees manage the transition back to work. They suggest career counselling for women so that they are clear about their career objectives. These consultants also suggest that employers need to be given guidance about managing the transition back to work, including keeping in contact with female solicitors while they are away (so that they do not lose connection with the firm and legal practice) and providing professional development opportunities for female solicitors so that they can keep up to date with changes in law and legal practice. Initiatives such as these are already in place in some firms in Sydney.⁵²

There are opportunities for education providers (Law Society, commercial and in house) to design and implement education programs for employers and employees to assist both to manage absences from the workplace and the transition back to work. Publicity about the effective initiatives taken by firms may encourage others to do likewise.

Mentoring opportunities

In the 2001 Remuneration and Work Conditions survey, female solicitors cited the lack of female role models and mentors as a key problem in helping them define and achieve their own career goals.⁵³ The influence of role models is illustrated in the following remark made by Alexandra Richards QC, President of the Australian Women Lawyers, on the death of Dame Roma Mitchell in March 2000:

*Dame Roma Mitchell was an inspiration to all women lawyers. Her tenacity and perseverance were well known. She really led the current generation of women lawyers by her outstanding example: as a lawyer, as an advocate for women’s rights and as a human being. When a great leader like Dame Roma dies, our society is the poorer for it. AWL has met with Dame Roma on several occasions over the past few years. We have been fortunate to gain from her insights and experiences. She always provided us with sensible advice, delivered in the most gracious manner. In recognition of her support the AWL Board had recently voted Dame Roma a life member.*⁵⁴

This quote illustrates the importance of having appropriate role models in the profession. The ABA Commission on Women concluded that “senior women cannot adequately fill the gap; their numbers are too small and their schedules are too over committed to provide support for all the junior colleagues who need it. Women in sole practice, or those working part-time from home offices, are especially likely to feel out of the loop of advice and contacts. Formal mentoring programs in firms and bar associations are a partial solution.”⁵⁵

An initiative to address this issue has been taken by the University of New South Wales Law Society (sponsored by Freehills and the Women Lawyers’ Association of NSW). This group recently launched the second annual mentoring program which aims to introduce female law students to female lawyers preferably practising in an area of interest to the student. Participation in the program allows students to:

- Meet female legal practitioners in an informal atmosphere
- Build some useful contacts; and
- Learn about what it is like to practise in a certain area of law.

Mentors are encouraged to act as ‘contact’ for the student in a particular area of law and provide advice about career options.

Establishing sustainable mentoring programs in the legal profession is difficult unless firms validate that the time spent on mentoring (either as a mentor or ‘mentoree’) is a legitimate activity that occurs within the billable hours framework. There may be opportunities for the Law Society to work with the profession to establish mentoring guides for firms of all sizes. It may also be appropriate to review the career information published by the Law Society that is made available to high school and university students and the speakers’ programs to ensure that an appropriate message is conveyed to aspiring female (and male) solicitors about the role of women in the profession and the leadership opportunities available to women.

Professional development

Women, like their male colleagues, need training in firm building skills such as marketing, assertiveness, communication skills and remuneration/work conditions negotiations. Some trainers suggest that because “women face different issues...[and], their experiences differ from men’s, [t]hey often have different professional development needs.”⁵⁶ These writers suggest that it is appropriate to organise training sessions that are specifically designed to meet the needs of women. For example, sessions about marketing can focus on ideas that do not involve sport or one-to-one dinners (that some women find inappropriate). There are opportunities for CLE providers (commercial, Law Society and in house) to design and implement specific education programs for female solicitors. In addition, it may be necessary to ensure that employers sponsor these initiatives as some will need to be done between the hours of 9 – 5 to accommodate women’s family responsibilities.

The other aspect of professional development are programs to eliminate harassment and discrimination in the workplace. The Legal Profession Regulation 142 (education initiative) is designed to achieve this. The seminar program that is run by the consortium of the College of Law, LawCover and the University of Western Sydney, includes the following units:

- *Unit 1: Personal Risk Management*
- *Unit 2: Regulation of the Legal Workplace*
- *Unit 3: Better Practice in Legal Human Resource Management*
- *Unit 4: Better Practice in Legal Career Management*

This program is one of many being conducted throughout the state. It may be appropriate to survey providers to gather information about the types of programs that are conducted, the feedback of participants and a professional assessment as to whether the programs are changing

or could in the long term change attitudes and practices. The annual MCLE audit will also provide information about the profession's level of compliance with this initiative.

Monitoring the impact of the 142 initiative on the harassment and discrimination statistics is one role for the Law Society.

One of the issues facing education providers is the apparent lack of recognition within the profession about the need to make time for professional development. Although many employers recognise the value of a 'learning organisation' and budget accordingly, there are many stories about solicitors cancelling education seminars, being 'pulled out' of a seminar because of work commitments and so on. If the profession is serious about using professional development as a means to engineer change in the profession, then it must recognize that such education demands the firm's (the profession's) time and that professional development has an economic value equivalent to billable hours. It may be necessary for the Law Society to reconsider the value of the MCLE scheme. Ten hours is no longer sufficient to assure the profession, the community and the other legal system stakeholders, that the profession is up to date with the range of legal practice issues (both substantive law and practice management issues) that they need to be. The inclusion of sub-mandatory topics (EEO, occupational health and safety and possibly ethics), diminishes what is already a minimal educational requirement. Other professions have a substantial mandatory professional development requirement which is evidence of the importance these professions place on ensuring currency of knowledge, skills and attitudes.⁵⁷ It may be timely for the Law Society to review the objectives and structure of the MCLE scheme to determine whether the scheme is still the best model of mandatory education if professional development will be used a key driver for change.

Regulating against discrimination and harassment

In addition to the general laws on discrimination and harassment which apply across the community, special provisions have been made prohibiting discriminatory conduct within the legal profession.

The Legal Profession Regulation 141 provides that:

"141 Discriminatory conduct (including sexual harassment) prohibited"

However, under the terms of the *Legal Profession Act 1987* (the "Act") the Council of the Law Society can only refuse to issue, cancel or suspend a practising certificate if a practitioner has breached a provision of the Act. A breach of the Regulation does not constitute a breach of the Act.

The Act provides:

"37 (1) A Council may refuse to issue, may cancel or may suspend a practising certificate if the applicant or holder:

... (f) has contravened a provision of this Act, or"

It may be appropriate for the Law Society to raise this issue with the New South Wales Attorney General's Department and work with that Department to overcome this technical legal problem but, in this regard, account will need to be taken of the impact of all the Regulations under the Act, a breach of some of which should not appropriately attract this outcome.

Further, the Regulation imposes obligations on all solicitors to undertake two hours of MCLE on equal employment opportunity and unlawful discrimination (including unlawful sexual harassment and occupational health and safety). These provisions came into effect on 22 October 1999, and the obligations must be met every three years. While directed at legal practitioners, the obligations clearly apply to solicitors but the position of barristers is not so definitive. Moreover, the training requirement is unique to lawyers and we are not aware of similar requirements on other professions, trades and the private and public sectors. This shortfall may be an issue to raise for discussion with the NSW Attorney General.

Business management tools

Providing tools to firms so that they can measure the cost of staff attrition may be necessary. A recent study by the Victoria Law Foundation estimated that when a fourth year solicitor leaves a large law firm and is replaced, the cost to the firm is roughly \$145,000 (This represents costs incurred by the firm and revenue forgone.) The equivalent costs for a medium firm is approximately \$71,600 and for a small firm, approximately \$61,400. The Foundation has produced a simple Excel spreadsheet template which is designed to allow small, medium and large firms to accurately estimate revenue lost as well as cost expended as a result of turnover.⁵⁸

Articles and guides about these issues could be readily prepared for New South Wales firms and may prompt firms to reconsider their recruitment practices and their work conditions policies.

Alternative career paths for law firms

The creation, formalisation and endorsement of alternative career structures in law firms, such as part-time partnerships, alternative lateral career paths to partnership e.g. senior counsel and consultant, may create opportunities for female solicitors to achieve senior positions within the firm which include promotion criteria that is wider than the traditional criteria of full time service and profit generated.⁵⁹ The Victoria Law Foundation report suggests that the development of diverse career paths is related to enhancing solicitors' satisfaction. It noted that:

“In law firms there is only a traditional career path and it leads to partnership. Growth in firm size, more solicitors and competing lifestyle choices mean this career path may no longer meet the needs of all firms or all solicitors...”

Creating new titles is not enough. The firm needs to create a culture which recognises success in forms other than partnership. Alternative career paths are not there for those who have not or cannot make it. They should reflect the diversity of ambition within the firm.”

The report identifies the following alternative career paths:

- Salaried partners
- Part time partners
- Special Counsel
- Mentor
- Legal Manager; and
- Legal Co-ordinator

The report suggests that creating legitimate and credible alternative career paths recognizes the various ways that employees contribute to an organisation (not just through the volume of billable hours). Such paths would allow women, for example, to maintain a work profile, yet fulfill their other responsibilities. In this way, women would be eligible for senior roles. This would have an immediate spill on effect by creating more role models for other female solicitors and fostering a firm culture which recognises the contribution all employees make to the firm.

Flexible work practices

The Family Responsibilities Study highlighted the importance that employees place on flexible work policies, not only as a way of managing family responsibilities but also to accommodate the other interests that necessarily occupy the attention of a ‘well rounded’ lawyer (e.g. Olympic athletes, authors, volunteers). In its Work Practices Guide, the Victoria Law Foundation noted that “flexible work practices are no longer perks for exceptional practitioners – they are necessary to optimise human resource management and firm performance”.⁶⁰ Providing employers with details about the various leave options available and how they can be effectively managed in the workplace may encourage more firms to institute flexible work practices.

To assist firms to design and implement effective flexible work practices, the Victoria Law Foundation has published *Living and Working Together: Looking to the Future, Work Practices and Policies for Law Firms*. There are a number of guides available which define the variety of work arrangements that can be implemented and provide useful checklists to assist employers and employees to come to a mutually beneficial arrangement.⁶¹

It may also be necessary to ‘debunk’ some of the myths about the effectiveness and efficiency of alternative work arrangements. For example, it is commonly held that part-time workers do not provide the input to the office that full time workers do. However, research has found that part-time workers tend to be more productive, hour for hour, than full-time workers because it is easier to work at peak efficiency for short periods.⁶²

Hours of work

As the authors of the Family Responsibilities Study noted, “the hours worked by solicitors are the result of cultural, structural and economic influences within the legal profession. For instance, the emphasis on billable hours as a way to organise work, income and rewards is a major factor underpinning individual workloads.”⁶³ The authors recognised that the ‘historical nature of the legal profession and the systems within which it operates will...hamper a quick cultural change.” The authors suggested that ‘rather than expending energy trying to change the fundamental nature of the legal profession....’ that the focus shift to ‘changing existing practices’ and argue that solicitors want access to ‘alternative working arrangements without guilt’. However, the fundamental issue about hours of work may not be addressed solely by flexible work practices.

The recent ACTU report made the following suggestions to address the issue of excessive working hours. These included having the right number of people to do the work; challenging the “stigma and secondary conditions and possibilities that attach to part time work, job sharing and other workplace time strategies that allow workers to reduce their hours without ‘trashing their conditions’”, and legislating hours and conditions.⁶⁴

The option to legislate workers’ hours has been taken by the European Union through its Working Time Directive (adopted in 1993).⁶⁵ The Directive provides that:

- Every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24 hour period
- That where the working day is longer than six hours that every worker is entitled to a rest break
- That for every seven day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus 11 hours daily rest
- That the average working time for each seven-day period, including overtime does not exceed 48 hours; and

- That every worker is entitled to paid annual leave of at least four weeks

Although France has recently legislated for a maximum 35 hour week, early reports indicate that while many women reduced their hours to four days a week, men have been reluctant to do the same and many are working overtime.⁶⁶

The landmark decision on 23 July 2002 in the Australian Industrial Relations Commission in the Working Hours Case⁶⁷ (also known as the Reasonable Hours Case) established a basic right to refuse unreasonable overtime. The Commission accepted ACTU evidence of the scope of both paid and unpaid overtime, noting that in terms of long hours Australia ranked only second to South Korea amongst developed nations. It was satisfied that long hours of work can adversely affect the health and family life of employees.

In the light of this recent decision, it is appropriate for the profession (perhaps through a debate stimulated by the Law Society), to review the profession's culture of 'long hours equating with productivity and profitability'. The profession needs to be made aware on the research about the impact of fatigue in the workplace, the expectation by employees for flexible work practices that measure (and value) output rather than input (hours) and the viable options that are available. A candid discussion in the profession about this option may stimulate a whole new range of innovative approaches to work and valuing and rewarding work.

Leave entitlements

The Family Responsibilities Study found that law firms favour cost neutral options when instituting leave options (unlike many government and corporate employers). Twenty-nine percent of respondents to the inaugural Remuneration and Work Conditions Survey reported that paid maternity leave was available. This proportion remained stable in the 2002 survey (28%). Of interest to note, is that 41% of respondents were not sure if their organisation offered paid maternity leave. Nine per cent of women participating in the survey had accessed paid maternity leave. Implementing a range of flexible leave options and paid maternity (or paternity) leave may attract new employees and retain current staff. While law firms reflect the Australian business culture of generally not paying staff on maternity leave, the experience overseas (particularly in the Nordic countries) is very different. The following countries now offer paid maternity leave: Denmark – 30 weeks full pay; Norway – 42 weeks full pay; Finland – 52 weeks on 70% pay; and Sweden – 64 weeks on 63% pay.⁶⁸ Nineteen of Australia's top 20 trading partners provide some form of maternity leave. All OECD countries except for Australia and the US (and until recently, New Zealand) provide paid maternity leave. On 1 July 2002 New Zealand introduced paid parental leave providing 12 weeks paid leave.

The issue of universal paid maternity leave in Australia has recently been the focus of considerable, and often heated, public debate and media attention. On 18 April 2002 Prue Goward, the Federal Sex Discrimination Commissioner, launched 'Valuing Parenthood: Options for paid maternity leave – Interim Paper 2002'. The paper proposes options for implementing a national paid maternity leave scheme, examines provisions in Australia compared to other countries and canvasses the arguments for a national scheme. Although the paper does not make recommendations, submissions have been sought from interested parties and a final report including recommendations will be forwarded to the Federal Government in December 2002.

In light of the current debate it may be appropriate for the Law Society to publish guides for the profession about the costs and structure of various leave entitlements, including paid maternity leave to encourage employers to entertain the possibility and to encourage employees to raise the issue with their employers.

Tax relief for childcare arrangements

In 2002 the Taxation Committee of the Society's Business Law Committee was asked to consider the tax relief available in relation to childcare arrangements in the light of the position of women in the legal profession. The Committee's paper is set out in Appendix 3.

The Committee considered the following main ways in which the tax system provides relief to employees and employers in relation to childcare expenses incurred by the employee in order to attend work.

- Childcare Benefit
- Childcare expenses as a general tax deduction
- Childcare services as a fringe benefit

The Committee concluded that the tax system provides limited benefits to employees who incur childcare expenses for childcare required by an employee whilst at work. Childcare arrangements coupled with the lack of flexible work opportunities may make it difficult for women and men to balance work and family commitments, thereby impeding the path to partnership, or to maintain their position in their firms after having had children.

Codes and model contracts

One option to assist the profession to implement change is to provide codes and model contracts. These documents can include general policy statements and then a range of clause options for firms to use. The guides and/or contracts can bring together a wide range of employment issues into one document that employers and employees can then use as the basis for negotiating the terms and conditions of employment in an informed way. These documents can be particularly useful in articulating 'best practice' standards aspired to by the whole profession and provide a ready reckoner for firms that may not have the time, expertise or resources to prepare such a documents independently. There are several examples that might provide a useful template for the Law Society of New South Wales:

NSW Young Lawyers Code for Employed Solicitors

In 1991, the Council of the Law Society endorsed a Code for Employed Solicitors prepared by NSW Young Lawyers. In August 2000, Young Lawyers submitted a revised edition for Council's consideration. The draft was referred to the Society's Industrial Relations Committee, Equal Opportunity Committee and NSW Young Lawyers for further consideration. A revised proposal has not yet been returned to Council for further deliberations. The iteration prepared by Young Lawyers seeks to "promote minimum employment practices designed to ensure the equitable treatment of employed solicitors and to encourage high standards of honest, diligent, competent and professional legal advice and representation."⁶⁹ The code describes standards for solicitors and employers and deals with a range of issues including: obligations of due care and diligence, termination of employment, recruitment practices, volume of work, policies about cab charges and meal allowances, leave entitlements, payment of professional fees (such as practising certificates) and childcare.

Law Institute of Victoria – Young Lawyers Section

In April 2001, the Young Lawyers Section published “Thriving and Surviving” which describes guidelines for employers, employee solicitors and articulated clerks in Victoria for employment practices and achieving a healthy balance. “The aim of Thriving and Surviving is to document our ‘perfect world’ legal employment relationship. It illustrates mutual obligations of employer and employee and makes several suggestions that, if implemented, may make the life of a junior lawyer more enjoyable.”⁷⁰ The guidelines cover the following topics: definitions; objects of the guidelines; quality of life; the employee; articulated clerks; the employer; and professional development. For example, in the section about quality of life, the guidelines state that “the employer and the employee should... promote flexible and sensible working hours; encourage the maintenance of a balanced and healthy lifestyle.”

Law Council of Australia Equalising Opportunities in Law Committee Draft Employment Agreement

The Law Council’s Equalising Opportunities in Law Committee has released a draft employment agreement to constituent bodies for comment. The Employment Agreement seeks to assist the profession to improve the participation of disadvantaged groups in the law. The Committee’s focus is on the participation of women, disabled persons, indigenous Australians and people from different ethnic and racial backgrounds.⁷¹

The key aspects of the draft agreement are:

- Inclusion of a probation period during which time either party may terminate the employment on 2 weeks notice or payment in lieu;
- A contractual right to annual salary review in accordance with performance criteria specified by the employer
- Provision for inclusion of a bonus scheme
- A requirement that the employer pay the costs of the employee’s practicing certificate, Law Society membership, mandatory continuing legal education and admission fees (if required) and reasonable costs of membership of other professional associations or organisations or training relevant to the employee’s area of legal practice or professional development;
- The inclusion of an obligation to pay overtime after 45 hours of work
- A requirement for the employer to negotiate in good faith should an employee request part-time work
- Imposition of the usual obligations upon employees in respect of competence, ethical responsibilities, compliance with firm policy and preservation of confidential information
- Termination on 2 weeks notice for each year of service unless the employee has an urgent reason for earlier notice; and
- A requirement that the employers produce and include a written duty statement.

Recognition of innovation and excellence

The Law Society's Gender and Industrial Relations Issues Task Force in its report in 1999 recommended that:

the Society establish an annual award in equal opportunity and flexible work arrangements. The Task Force (or its successor) will seek appropriate input from such bodies as QIL, NSW EEO Practitioners Association, and the Affirmative Action Agency in order to develop criteria for nominations, categories of awards, composition of the selection panel and its procedures.

This recommendation was adopted by Council and nominations have now been called for the Law Society's inaugural EEO Awards. The winners will be announced on 29 October 2002.

The aim of the The Law Society's EEO Awards is to encourage exemplary EEO practice in the delivery of legal services. The EEO Awards will recognise the efforts of both individuals and organisations in the promotion, development and implementation of equal employment opportunity strategies within their organisation. This includes encouraging and promoting a discrimination and harassment-free workplace and the development of strategies to assist practitioners to balance their work and life commitments.

There are four different award categories:

1. **Starters** – this award will recognise a firm/organisation that has taken the first steps in developing and implementing equal employment opportunity policies and practices in the workplace
2. **Small and medium firm/organisation** – this award will recognise a firm/organisation with less than 30 employees that has well developed equal employment opportunity policies and strategies in place
3. **Large firm/organisation** – this award will recognise a firm/organisation with more than 30 employees that has well developed equal employment opportunity policies and strategies in place
4. **Special Award** – (*the focus of this award will change every year*) – in 2002 this award will recognise an individual or a firm/organisation that has well developed work/life policies and strategies in place and can demonstrate the impact of these strategies.

In recent years some of the large law firms have taken positive steps in addressing the barriers to equal opportunity for women in the legal profession. This includes such initiatives as work/life strategies which also bring a range of benefits to men in the profession. Such initiatives include:

- Paid maternity leave, flexible hours for pregnant employees, provision of breast feeding facilities, keep in touch and return to work programmes
- Flexible working arrangements such as job sharing, part-time work, working from home, negotiated start/finish times
- Part-time partnerships, development and publicising of partnership criteria
- Formal internal mentoring programs, participation in external mentoring programs and work placement schemes
- Skills workshops in practice management and client relationships, leadership and management programmes
- Promotion of family-friendly workplaces, family/parent networking groups
- Development and promotion of sexual harassment, EEO, anti-bullying and anti-discrimination policies
- Study leave, carer's leave, travel leave and extended leave for career breaks
- Merit based recruitment and selection policies
- Ensuring EEO accountabilities are part of routine management practice; and
- Child and elder care initiatives

Firms have reported that such initiatives have had the following positive effects:

- Revenue growth
- Increase in market profile
- Increase in quality of recruits
- Improvement in morale
- Strong commitment to firms by employees; and
- Positive client reaction

Research

Although much is known about New South Wales solicitors, there are still substantial gaps in our knowledge about the career patterns of solicitors (male and female) and the factors driving their career choices. There is also little national data about the profession (with the exception of the research done by the Victoria Law Foundation and the Law Society of Western Australia referred to earlier in this report).

There are several types of research that could appropriately be undertaken or sponsored by the Law Society. They fall into three main categories:

- The career paths of women in the profession
- Case studies of best practice in the profession (and salient examples of things that ‘went wrong’); and
- The career intentions of newest generations of solicitors in private practice (that is, male and female solicitors under 40 years of age)

(a) The career paths of women in the profession

More work may need to be done to properly ‘track’ the careers of women in the profession. At present, the data collection relies on snapshots of the entire cohort of female solicitors at any one time. While this information provides a global view of the profession, the data fails to:

- Account for the time that women spend out of the profession (while continuing to hold a practising certificate)
- The motivating factors behind the career changes that women make
- The attitudes of women towards their previous and current employer; and
- Their experiences of harassment and discrimination.

(b) case studies of best practice in the profession (and salient examples of things that ‘went wrong’)

Many firms have already identified the issues of retaining women and are working to maintain the interest of new employees through seminars, mentoring and lifestyle programs. These case studies (accompanied by cost/benefit analyses) are evidence to other members of the profession of the potential of these initiatives to make a real difference to their workplaces, not just in terms of the bottom line, but also in morale and reputation in the profession. The publication of case studies and information about ‘how to’ shares the knowledge and experience within the profession.

(c) the career intentions of newest generations of solicitors in private practice (that is, male and female solicitors under 40 years of age)

The research indicates (as already described in this report), that a generational shift is underway in workplaces. Employers can no longer assume that new employees share the same values as their employers, the impact of which can be felt in the retention cycles, career ambitions,

structure of work practices and so on. It may be that the newest generation of young solicitors have characteristics that they share or on which they differ from other workers of their generation. Research about what motivates the newest members of the profession could be used to assist firms to make decisions about recruitment, structure of work practices, retention strategies and so on.

(d) a survey of flexible work options offered by employers

The research indicates (as already described in this report), that a large proportion of respondents are not aware of flexible work options offered by their employers. Research conducted with employers about the flexible work options offered by workplaces could enable the development of best practice in work conditions to be developed by the profession. This could be used to assist firms to make decisions about creating flexible workplaces and enhance retention strategies.

RECOMMENDATIONS

Publications

1. Publish guides for the profession about designing and implementing effective flexible work practices.
2. Develop guides and articles about business management tools (such as the cost of attrition) to encourage firms to review their recruitment practices and their work condition policies.
3. Prepare model guides and employment contracts that serve as a best practice model for employers and employees.
4. Establish guidelines to assist firms to institute mentoring programs within firms.
5. Review the careers information published by the Law Society to promote the role of women in the legal profession.
6. Publish guides for the profession about the costs and structure of various leave entitlements to encourage flexible leave arrangements.

Business structures

1. Stimulate debate in the profession about the appropriateness of the billable hours framework and the profession's culture of equating long hours with productivity and profitability.
2. Prepare a submission to the Australian Taxation Office recommending changes to existing legislation in relation to tax deductibility and childcare.

Professional development

1. Develop a professional development program for women focusing on business/practice skills.
2. Implement an education program to assist employers and employees to manage prolonged absences from the workplace and the transition back to work.
3. Monitor the impact of Regulation 142 on the rate of harassment and discrimination in the profession.
4. Survey the providers of Regulation 142 programs to gather information about the types of programs that are conducted, the feedback of participant, and an independent assessment as to whether the programs are changing, or could in the long term change attitudes and practices.

5. Raise with the Attorney General various issues arising from Regulation 142.

Research

1. Enhance the Law Society's research program to include studies of the career paths of women, case studies of best practice and career intentions of young solicitors, and gather data from employers about flexible work options in the legal workplace.

Other

1. Publicise the initiatives taken by law firms, such as mentoring and work/life programs and winners of such programs as the EOWA list of best practice firms and the Law Society's EEO Awards.
2. Expand the Equal Opportunity Awards to include an award that recognises an outstanding achievement by a female solicitor.

CONCLUSION

The issue about women as partners in the legal profession is a complex one. As this paper illustrates, the low number of women at senior levels in the private profession is due to a number of complex factors such as the limitations of the current structures and practices in law firms, the barriers created by the profession's own culture, changes in the demographic mix of the profession and changes in society's expectations about the role of work and work/life balance.

However, it is not necessary to scale Mount Everest in order to see over the horizon. There are opportunities for the Law Society working in conjunction with the profession, to raise awareness, become informed about alternative ways of doing work and taking a leadership role, in order to bring about sustainable and substantive change to ensure that women are equal partners in the legal profession.

APPENDIX 1: STATISTICS

Profile of female solicitors – New South Wales

	Female Solicitors		Whole Profession
	No.	%	%
Female Solicitors	6,143	36.6	16,769
Mode of Employment*			
Full Time		83.2	89.2
Part Time		14.7	8.7
Other		2.1	2.1
Type of Employment			
Private	4,075	66.3	76.0
Government	861	14.0	10.2
Corporate	1,026	16.7	12.8
Profile of Private Practitioners			
Partners	447	11.0	26.2
Sole practitioners	521	12.8	22.7
Employees	3,092	75.9	50.0
Size of Law Firm			
Sole Practitioner	1,045	25.6	32.5
2 – 4 Partners	670	16.4	20.7
5 – 10 Partners	317	7.8	8.1
11 – 20 Partners	179	4.4	4.0
21 + Partners	1,864	45.7	34.6
Age (average)	33 years		40.2 years
Years Since Admission (average)	7.7 years		12.9 years

* indicates data from the 2002/2003 Practising Certificate Survey.

The following statistics are taken from the August 2002 Profile.

Profile: Individual solicitors in private practice

	Female		Male		All	
	No.	%	No.	%	No.	%
Principal	447	11.0	2,889	33.4	3,336	26.2
Sole principal	521	12.8	2,368	27.4	2,889	22.7
Employee	3,092	75.9	3,266	37.8	6,358	50.0
Other	15	0.4	119	1.4	134	1.1
Total	4,075	100.0	8,642	100.0	12,717	100.0

Profile of principals in private practice (by firm size)

	Female		Male		All	
	No	%	No.	%	No.	%
Sole Practitioner	503	54.0	2,352	45.5	2,855	46.8
2 – 4 Partners	154	16.5	1,264	24.4	1,418	23.2
5 – 10 Partners	48	5.2	400	7.7	448	7.3
11 – 20 Partners	20	2.1	136	2.6	156	2.6
21 + Partners	207	22.2	1,022	19.8	1,229	20.1
TOTAL	932	100.0	5,174	100.0	6,159	100.0

Profile of employed solicitors in private practice (by firm size)

	Female		Male		All	
	No	%	No.	%	No.	%
Sole Practitioner	505	16.3	719	22.0	1,224	19.3
2 – 4 Partners	509	16.5	689	21.1	1,198	18.8
5 – 10 Partners	268	8.9	280	8.6	548	8.6
11 – 20 Partners	158	5.1	186	5.7	344	5.4
21 + Partners	1,652	53.4	1,392	42.6	3,044	47.9
TOTAL	3,092	100.0	3,266	100.0	6,358	100.0

National profession

	Principals			Employed			All		All
	Male	Female	All	Male	Female	All	Male	Female	
1992/93	13,465	1,795	15,260	5,788	3,616	9,405	19,253	5,401	24,665
1995/96	13,715	2,703	16,417	6,775	4,779	11,554	20,490	7,481	27,971
1998/99(a)	-	-	-	-	-	-	21,807	8,206	30,140
1998/99(b)	10,368	1,955	12,323	7,383	5,338	12,721	17,751	7,293	25,044

(a) In the 1998/99 survey, the Australian Bureau of Statistics separated the statistics for the legal profession into three categories: solicitors practices, barristers and legal aid. The figures in this row summarises the figures for the whole of the profession.

(b) In this row, the figures for solicitors practices only have been recorded.

This table shows that over the 7 year period during that the Australian Bureau of Statistics has been analysing the national legal profession, that there has been a 22% increase in the whole profession, a 52% increase in the number of female legal professionals and 13% increase in the number of male legal professionals.

Changes in the profile of the profession

The gender profile of the solicitors of New South Wales continues to change as it has since women began entering the profession. The following table illustrates the rate of change:⁷²

	No	Female %	No	Male %	All No
1950	15	1.0	1,485	99.0	1,500
1958	65	3.0	2,102	97.0	2,167
1969	161	5.0	3,059	95.0	3,220
1975	304	6.0	4,763	94.0	5,067
1984	1,056	13.7	6,652	86.3	7,708
1990	2,398	22.2	8,393	77.8	10,791
1995	3,554	27.8	9,243	72.2	12,797
2000	5,322	34.6	10,060	65.4	15,382
2001	5,803	35.8	10,417	64.2	16,220
2002	6,143	36.6	10,626	63.4	16,769

"Since 1988, the profession has grown by almost 57% with an annual average growth rate of 3.8%. Within this general growth pattern, the number of female solicitors has grown by 169% with an annual average growth rate of 8.6%. In contrast, the number of male solicitors has increased by 28.5% with an annual rate of 2.1%. The rate of growth for male solicitors and the profession slowed in the twelve months since 1999 compared with the twelve months up to 1 October 1999. In contrast, female solicitors rate of growth increased from 9.2% to 9.4%."⁷³

One measure of seniority is the type of practising certificate held by solicitors. The Law Society currently assigns two types of certificates: A and B. An A certificate is issued to a solicitor who has completed a period of restricted practice. An A certificate entitles the holder to practise on his or her own account. A solicitor holding a B certificate must be supervised by a solicitor with an A certificate.

Gender profile of partners

There are several ways to count (and evaluate) the proportion of women who are partners. They are:

- The number of partners who are women
- The number of partners who are women as a proportion of the whole practising profession
- Of the number of female solicitors, the proportion of this group who are partners

	Female			Male			All	
	No	% of	% of women	No partners	% of	% of men	No partners	%
1988	183	9.2	5.4	3,186	40.7	32.5	3,369	34.3
1989	213	9.7	5.9	3,369	41.1	32.4	3,582	34.5
1990	245	10.2	6.7	3,395	40.5	31.5	3,640	33.7
1991	267	10.1	7.2	3,463	40.3	30.8	3,730	33.2
1992	283	10.0	7.5	3,476	39.5	29.9	3,759	32.3
1993	278	9.0	7.6	3,362	38.0	28.1	3,640	30.4
1994	269	8.2	7.7	3,202	35.6	26.1	3,471	28.3
1995	278	7.8	8.2	3,121	33.8	24.4	3,399	26.6
1996	310	8.0	9.3	3,035	32.5	23.0	3,345	25.3
1997	327	8.0	10.1	2,903	31.2	21.6	3,230	24.1
1998	322	7.2	10.5	2,733	29.0	19.7	3,055	22.0
1999	333	6.8	10.9	2,732	27.9	18.7	3,065	20.9
2000	378	7.1	12.0	2,774	27.6	18.0	3,152	20.5
2001	415	7.2	12.9	2,813	27.0	17.3	3,228	19.9

This table illustrates that the proportion of women who are partners has fluctuated over the last ten years. There is no steady and consistent rise in the number of women who have become partners. After the early 1990's when the percentage of women who were partners peaked at 10.0% the proportion of women in this group has risen and fallen. However, as a proportion of the partnership segment, the percentage of women has steadily increased and is now at 12.9%. Over the same period, the percentage of men practising as partners has steadily declined during the period in which statistics have been kept (a fall of 4.2 percentage points). There is an overall trend in the profession which has seen a fall in the percentage of solicitors practising as partners.⁷⁴

Gender profile of sole practitioners

The pattern of sole practitioners since 1988 is the reverse of the partnership profile. In contrast to statistics for partners, there has been a steady increase until 1998 in the number and proportion of solicitors practising as sole practitioners. This pattern is reflected in all gender groupings. However, it appears that this trend is tapering out.

	No	% of women	Female % of partners	No	% of men	Male % of partners	No	All %
1988	151	7.6	9.7	1,399	17.9	14.3	1,550	15.8
1989	179	8.2	11.3	1,407	17.2	13.5	1,586	15.3
1990	185	7.7	11.5	1,428	17.0	13.2	1,613	14.9
1991	204	7.7	12.3	1,460	17.0	13.0	1,664	14.8
1992	233	8.2	13.1	543	17.5	13.3	1,776	15.3
1993	269	8.7	14.4	1,638	18.5	13.7	1,907	15.9
1994	285	8.7	14.1	1,742	19.4	14.2	2,027	16.5
1995	321	9.0	14.7	1,859	20.1	14.5	2,180	17.0
1996	371	9.6	15.5	2,018	21.6	15.3	2,389	18.1
1997	395	9.6	15.9	2,094	22.5	15.6	2,489	18.6
1998	434	9.7	16.8	2,145	22.8	15.5	2,579	18.6
1999	469	9.6	17.5	2,206	22.6	15.1	2,675	18.3
2000	475	8.9	17.6	2,217	22.0	14.4	2,692	17.5
2001	510	8.6	17.9	2,339	22.2	14.1	2,849	17.3

Work options offered and accessed

A summary of respondents' experiences of bullying/intimidation, discrimination and harassment is presented below.

Work options offered and accessed

Work Option	Option Offered	Option not Offered	Unsure	Accessed by individual
Flexible emergency leave	58.7	9.7	31.6	39.9
Flexible hours	47.7	38.7	13.6	61.4
Use of sick leave to attend family commitments	44.2	19.6	36.3	27.5
Part-time work	42.8	39.0	18.2	20.6
Telecommuting (work from home)	29.9	48.0	22.1	25.6
Paid maternity leave	28.2	31.0	40.9	5.0
Career Break	25.4	27.6	47.0	6.2
Job Sharing	20.2	53.0	26.8	2.5
Unpaid maternity leave (> than 1 year)	17.0	30.5	52.4	2.5
Paid paternity leave	15.3	32.0	52.7	2.3
Paid adoptive leave	9.7	25.8	64.5	0.2
Unpaid paternity leave (> than 1 year)	8.2	32.2	59.6	0.3
Unpaid adoptive leave (> than 1 year)	4.8	28.6	66.6	-
Annualised hours	3.5	41.5	55.0	0.8
School term working only	3.2	49.8	47.0	0.8

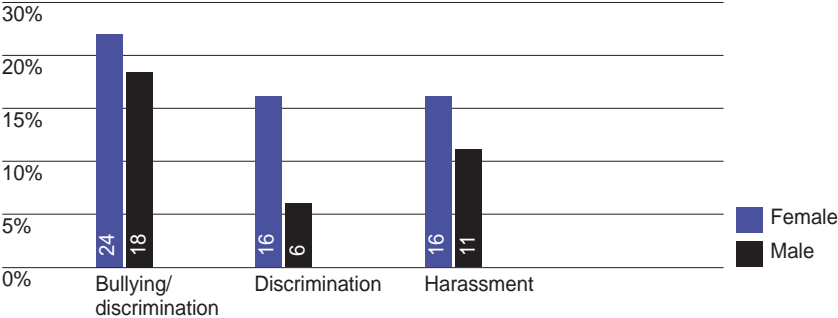
Type of leave

	Option offered 2002 %	Option offered 2001 %
Family emergency leave	58.7	58.3
Flexible hours	47.7	46.1
Sick leave for family commitments	44.2	42.9
Part time work	42.8	36.6
Telecommuting	29.9	27.6
Paid maternity leave	28.2	29.0
Career breaks	25.4	22.3
Job sharing	20.2	17.1
Unpaid maternity leave (more than 1 year)	17.0	19.7
Paid paternity leave	15.3	14.1
Paid leave for adoptive parents	9.7	8.9
Unpaid paternity leave (more than 1 year)	8.2	10.1
Unpaid leave for adoptive parents (more than 1 year)	4.8	5.4
Annualised hours	3.5	3.6
School term working only	3.2	2.2

Harassment, discrimination, intimidation and bullying

A summary of respondents' experiences of bullying/intimidation, discrimination and harassment is presented below.

Participants who have experienced bullying/intimidation, discrimination & harassment



For women, discrimination was most likely to relate to gender and carer's responsibilities. For men discrimination was more likely to relate to age. This is illustrated in more detail in the table below:⁷⁵

Experience of discrimination

Discrimination	Male	Female	Total
Gender	23.1	60.0	52.1
Age	42.3	13.7	19.8
Carer's responsibility	-	21.1	16.5
Marital Status	3.8	11.6	9.9
Pregnancy	-	10.5	8.3
Race	15.4	6.6	6.6
Sexual Preference	15.4	-	3.3
Disability	3.8	2.1	2.5
Other	23.1	15.8	17.4

For women, harassment was most likely to relate to gender. For both women and men harassment also related to junior status and being new to the job. This is illustrated in more detail in the table below:

Experience of harassment

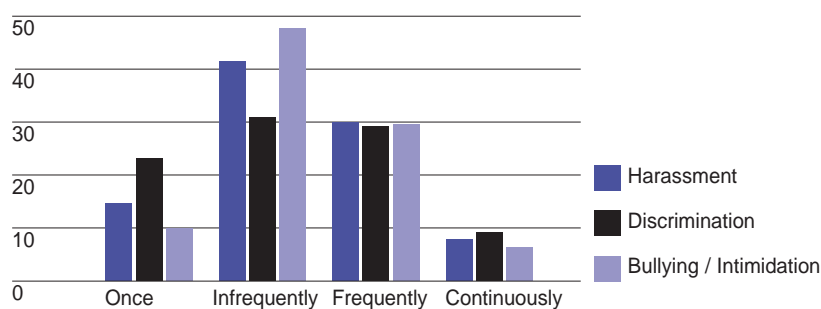
Harassment	Male	Female	Total
Gender	15.2	72.2	56.9
Junior status	39.4	33.3	35.0
Being new to the job	21.2	17.8	18.7
Age	15.2	11.1	12.2
Marital Status	9.1	11.1	10.6
Race	9.1	4.4	5.7
Pregnancy	-	5.6	4.1
Sexual Preference	9.1	2.2	4.1
Disability	6.1	-	1.6
Carer's responsibility	3.0	10.0	8.1
Other			

For both women and men intimidation and bullying related to junior status and being new to the job. This is illustrated in more detail in the table below: For women, intimidation and bullying also related to gender.

Experience of intimidation and bullying

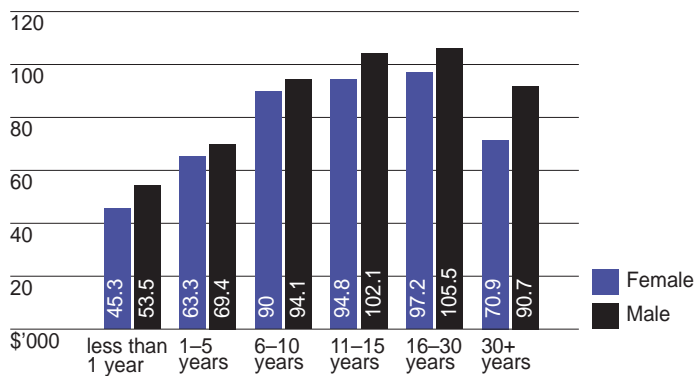
Intimidation / Bullying	Male	Female	Total
Junior status	58.7	51.0	53.5
Being new to the job	30.4	37.5	35.2
Gender	10.9	40.6	31.0
Age	15.2	14.6	14.8
Race	2.2	6.3	4.9
Marital Status	-	7.3	4.9
Carer's responsibility	2.2	5.2	4.2
Pregnancy	-	2.1	1.4
Sexual Preference	4.3	-	1.4
Disability	2.2	-	0.7
Other	15.2	20.8	19.0

Frequency of harassment, discrimination or bullying



Income

Income (mean) x gender x years since admission



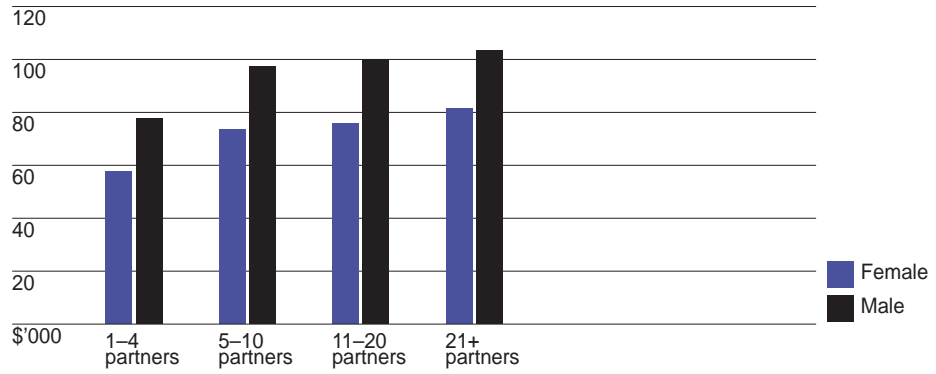
Income of solicitors: years since admission

	Female	Male	Gap
Less than 1 year	45,300	53,500	8,200
1 – 5 years	63,300	69,400	6,100
6 – 10 years	90,000	94,100	4,100
11 – 15 years	94,800	102,100	7,300
16 – 30 years	97,200	105,500	8,300
30+ years	70,900	90,700	19,800

Income of solicitors in private practice

	Female	Male	Gap
Partner	120,400	119,700	+700
Sole Practitioner	62,100	76,100	-14,000
Employee	68,800	75,000	-6,200

Figure 1: income of solicitors in private practice (full time)

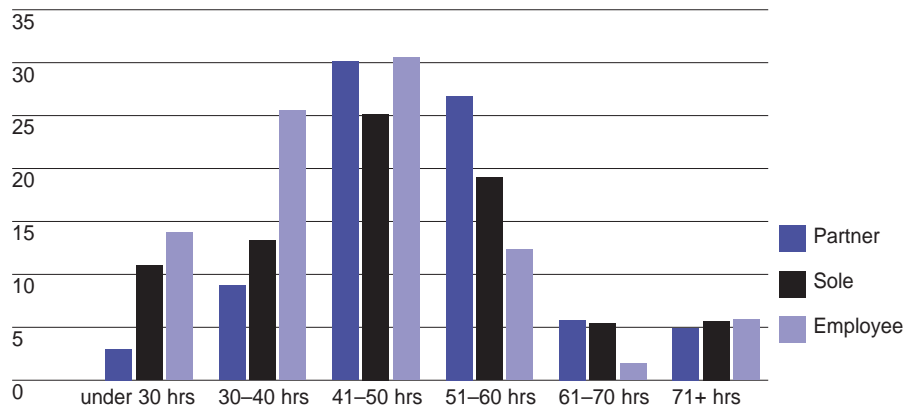


Income: employment sector

	Female	Male	Gap
Private	73,700	91,400	17,700
Corporate	98,000	116,100	18,100
Government	66,400	75,000	8,600

Hours of work

Hour of work (private practice)



Partnership aspirations

Reason	Male		Female		All	
	2002	2001	2002	2002	2002	2002
Attitude of partners	37.1	40.9	37.3	43.9	37.2	41.9
Lack of appropriate experience	29.0	31.8	24.5	41.5	26.2	36.0
Commitment to personal/family responsibilities	22.6	15.9	50.0	36.6	39.6	25.6
Lack of mentoring	14.5	22.7	23.5	26.8	20.1	24.4
Exclusion from formal networks within the organisation	11.3	27.3	17.6	14.6	15.2	20.9
Gender	1.6	-	27.5	31.7	17.7	15.1
Not known by the partners	21.0	13.6	6.9	14.6	12.2	15.1
Lack of appropriate female role models	-	2.3	26.5	22.0	16.5	11.6
Attitude of peers	4.8	11.4	6.9	9.8	6.1	10.5
Don't know	1.6	11.4	6.9	2.4	4.9	7.0
I work part-time	1.6	-	18.6	9.8	12.2	4.7
Lack of appropriate male role models	3.2	4.5	1.0	-	1.8	2.3
Other (includes individuals age, partnership too small, lack of performance)	29.0	20.5	13.7	4.9	19.5	12.8

APPENDIX 2: LAW SOCIETY INITIATIVES

The issue of women in the legal profession has been the subject of discussion at an earlier Council retreat (November 1998) and Task Forces. Below is a summary of the key work undertaken by the Law Society in the last decade.

25.5.95	Gender Bias and Women Working in the Legal Profession – Society positions adopted on Keys Young report proposals
4.12.97	Establishment of phone advice and mediation service agreed
17.12.98	Gender and industrial relations issues in the profession – action proposals
22.7.99	Gender and industrial relations issues in the profession – report, Quality of life in the legal profession, adopted (with amendments)
2000	Launch of the Work/Life Balance and Regulation 69C education program (a joint project of the College of Law, LawCover and the University of Western Sydney)
19.2.02	– Launch of the 2001 Equal Opportunity Handbook and Model Policies Inaugural Remuneration and Work Conditions Survey – Remuneration and Work Conditions Survey
30.05.02	Business Law Committee Paper, ‘Tax Relief for Childcare Arrangements’
29.10.02	Launch of the discussion paper, ‘After Ada – a new precedent for women in law’. Inaugural Equal Employment Opportunity (EEO) Awards
10.02	Equal Opportunity Committee Paper, ‘Bullying in the Legal Profession’

APPENDIX 3: TAX DEDUCTIBILITY OF CHILDCARE (30 May 2002)

The Taxation Subcommittee of the Business Law Committee has been asked to consider the tax relief available in relation to childcare arrangements to assist the Law Society Council prepare its paper "Women as Partners – Setting New Precedent". The paper will discuss the position of women in the legal profession, focusing on the opportunities and barriers to partnership.

The Council considers that expensive childcare arrangements coupled with the lack of flexible work opportunities may make it difficult for women (and men) to balance work and family commitments, thereby impeding the path to partnership, or to maintain their position in their firms after having had children.

We outline below the main areas in which the tax system provides relief to employees and employers in relation to childcare expenses incurred by the employee in order to attend work, and make recommendations as to how the current system could be improved to further assist working parents.

Tax relief for employees

The tax system provides limited benefits to employees who incur childcare expenses for childcare required by an employee whilst at work.

Childcare benefit

The Childcare Benefit is one of the benefits offered by the Federal Government as part of its Family Assistance package². The Childcare Benefit replaced the Government's Childcare Assistance and Childcare Rebate.

The Childcare Benefit is paid to parents for approved care (formal childcare services, including long care day centres, family day care, before and after school care services, vacation care services and some occasional care services) and registered care (provided by carers such as parents, relatives, nannies or private pre-schools that are registered with the Family Assistance Office).

All families are entitled to up to 20 hours of the Childcare Benefit a week where approved childcare is used, irrespective of whether parents satisfy the "work test" (essentially, where childcare is used for the parent's work, study or training purposes). Families can claim the Childcare Benefit for up to 50 hours a week for each child in either approved or registered care where each parent in the family satisfies the work test. In certain exceptional cases, families may claim more than 50 hours of childcare a week.

The amount of the Childcare Benefit to which a family is entitled depends on the number of children in childcare, whether the child is of school age and the annual family income. The maximum rate, currently \$129 a week (or 2.58 per hour) for one child and increasing up to \$420 for three or more children, is available for approved care to families with an income of less than approx \$30,000. A part rate is available where the family income is up to approx. \$85,000 (for one child) after which a minimum rate of \$21.70 per week (or 43 cents per hour) for each child in full-time care is available.

Where the child is in registered care, all families receive the minimum rate of \$21.70 a week, irrespective of family income. The rates are reduced by 15% for school-age children.

The Childcare Benefit is payable either as an annual lump sum or can be paid directly to the

approved childcare service resulting in a reduction of childcare fees. The payment itself is tax exempt, and therefore not included in the employee's assessable income³.

Therefore, this benefit is likely not to be available to a parent who is on a salary of a lawyer aspiring to partnership.

Goods and Services Tax

The supply of childcare by a registered carer, an approved childcare service or other supplier of childcare that is eligible for funding from the Commonwealth under certain guidelines, is GST-free⁴. This applies to family day care, occasional care, outside of school hours care or vacation care provided by such carers. Supplies that are directly related to such a supply of childcare, whether supplied by the childcare supplier or on their behalf, are also GST-free⁵. This means that no GST is payable by parents on childcare arrangements.

Deductibility of childcare expenses

Childcare expenses are not deductible to an employee as a general deduction⁶. The childcare expense is not viewed as being sufficiently incidental or relevant to the employee gaining assessable income. This will be the case even though the obtaining of childcare services is a prerequisite to the employee being in a position to work and earn any assessable income. The Courts have held on a number of occasions and in a number of different factual scenarios that childcare costs do not fall within the provisions for general deductibility⁷ and the ATO has as a matter of policy applied this strictly to all children care costs. Similarly, there is no specific deduction allowable for childcare expenses under the *Income Tax Assessment Act 1997*.

Fringe Benefits Tax

Where childcare services provided by an employer are a fringe benefit, the employee is not taxed on the fringe benefit. However, the grossed-up value of the childcare provided to employees is a "reportable fringe benefit amount", affecting the employee's entitlement to certain income-tested tax concessions and liability to income tested-surcharges (for example Medicare levy surcharge and superannuation contributions surcharge). Childcare which is exempt (discussed below) is not a reportable fringe benefit.

Dependant Spouse Rebate

The net cost of childcare is taken into account in calculating a spouse's separate net income for the purposes of the dependant spouse rebate where the childcare expense is a direct cost incurred to enable the spouse to engage in income earning activities. The net cost of childcare must take into account any Childcare Benefit received.

Tax relief for employers

The provision of childcare by an employer to current employees is a fringe benefit that is subject to fringe benefits tax unless the employee's child is cared for in a "childcare facility" located on the employer's business premises, or the business premises of a company related to the employer⁸. Where the provisions of childcare services is not an exempt fringe benefit, the employer will be taxed on the value of the childcare under the *Fringe Benefits Tax Assessment Act 1986*.

It should be noted that a "childcare facility" is limited to facilities for the caring for, minding or educating of children below the age of six⁹. It would therefore not extend to before and after school care of older children.

The ATO accepts that the provision of childcare by employers to current employees is an important factor in recruiting, retaining and otherwise rewarding employees, and as such, activities undertaken in connection with providing childcare would be “business operations” of the employer¹⁰. Therefore, premises of the employer used solely for the provision of childcare to employees will not be prevented from being “business premises” of the employer.

To be premises *of* the employer, the employer must have ownership of the premises, exclusive occupancy rights, or in some cases non-exclusive occupancy of the premises, provided the employer has a sufficient right to possession to enable it to carry on its business operations. Therefore, premises leased by 2 or more employers for the sole purpose of providing a childcare facility to employees will be “business premises” of each employer and therefore the provision of childcare at those premises would not be taxable to any of the employers¹¹.

Although an employer may engage the services of an independent childcare provider to provide the childcare services, the ATO has listed certain minimum requirements for any agreement between the employer and the childcare provider to ensure that the arrangement does not result in the childcare facility being treated as provided on the business premises of the childcare provider¹².

A contribution by an employer in order to obtain priority of access for a child of an employee to childcare services will be an exempt benefit if made in relation to an approved childcare service of the kind specified in the *Fringe Benefits Tax Assessment Act 1986*.¹³

It would be extremely rare for a solicitor’s office to have childcare facilities on its office premises.

Other benefits available

The Federal Government offers a number of other financial benefits to parents. However, apart from the Childcare Benefit, these are not intended to provide relief through the tax system for the costs of childcare incurred by working parents. These include the recently introduced Baby Bonus and the Family Tax Benefit.¹⁴

Recommended changes to the tax treatment of childcare

The Committee is of the view that the following changes to the tax system would provide greater relief to employees incurring childcare expenses for work-related purposes.

Deductibility of childcare costs

Childcare costs should be deductible to employees who need to place their children in childcare in order to allow them to attend work. This would recognise that childcare is an essential requirement for working parents, and directly affects their income-earning capacity. This would require amendment to the Income Tax Assessment Act 1997.

An implication of allowing a deduction for childcare expenses is that, as with all deductions, the deduction is of greater value to those individuals on higher marginal tax rates. To address this, an alternative would be to allow a tax offset for childcare costs, which is applied to reduce the tax payable rather than the taxpayer’s assessable income.

The cost of the deduction would pay for itself. More time at work equates to more salary which equates to more tax. Thereafter, promotion equates to more salary which equates to more tax.

Fringe Benefits Tax

The provision of childcare by an employer should be an exempt benefit for fringe benefits tax purposes, irrespective of whether the childcare is provided in a facility located on the employer's business premises. The current requirement that the childcare be provided on the employer's business premises places a significant burden on employers who may wish to provide (tax-effective) childcare to employees, particularly smaller businesses for whom establishing a childcare facility for a small number of parents may not be economical.

As discussed above, the ATO recognises the benefits to employers of providing childcare to their employees, yet employers are penalised for providing childcare, except in those limited circumstances where the employer is able to satisfy the requirement that the childcare facility be provided on the employer's business premises.

Exempting the provision of childcare by (for example) approved or registered carers from fringe benefits tax would benefit both employers and employees, imposing fewer burdens on the employer and providing greater flexibility to employees. It would encourage the provision of childcare by greater numbers of employers, and offer employees greater flexibility when making their childcare arrangements.

Childcare Benefit

If childcare is not deductible to parents, the Childcare Benefit should be amended to better reflect the costs to working parents associated with full-time childcare.

In particular, the following amendments to the current scheme are recommended:

- The Childcare Benefit apply at a uniform rate, irrespective of family income, or alternatively, the current scale of family income levels should be increased significantly; and
- The Childcare Benefit should be available for more than 50 hours a week for work-related purposes, without establishing exceptional circumstances.

In its current form, the Childcare Benefit does little to assist those families working the longer hours common in the legal profession, particularly in the years leading to partnership. The current benefit fails to recognise that those families with higher family incomes are also those most likely to be working longer hours, and therefore incur greater childcare costs.

A rebate of approximately \$20 each week does little to compensate a family for hundreds of dollars a week spent on childcare. In addition, although the Childcare Benefit is indexed annually¹⁵, the cost of childcare has, in the past, increased at a greater rate than the CPI, and if this trend continues the value of the Childcare Benefit will be reduced further over time¹⁶.

ENDNOTES

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- 19 report in the July issue of *Nature* cited in *CAW Health, Safety and Environment Newsletter* Vol 6. No. 2 February 1998
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- 23 Victoria Law Foundation *Facing the Future: Gender, Employment and Best Practice issues for Law Firms* 1996 cited in Victoria Law Foundation *Taking up the challenge women in the legal profession* 1999 p. 6
- 24 Victoria Law Foundation *Facing the Future: Gender, Employment and Best Practice Issues for Law Firms* cited in Victoria Law Foundation *Taking up the challenge women in the legal profession* p. 11
- 25 Victoria Law Foundation *Taking up the challenge women in the legal profession* p. 12
- 26 The recent *Remuneration and Work Conditions Survey* (The Law Society of New South Wales) asked respondents to indicate their level of satisfaction with each of the following factors: quality of work; management environment; mentoring; physical environment; salary, job security; autonomy; client contact; flexible hours; and number of hours work worked.
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if the pot sits on a heat source, and if you gradually turn up the temperature, something very interesting happens. As the temperature rises from 70 to 80 degrees F., the frog will do nothing. In fact, he will show every sign of enjoying himself. As the temperature gradually increases, the frog will become groggier and groggier, until he is unable to climb out of the pot. Though there is nothing restraining him, the frog will sit there and boil. Why? Because the frog's internal apparatus for sensing threats to survival is geared to sudden changes in his environment, not to slow, gradual changes." Published at <http://web2.iadfw.net/a0006613/bobh2.htm>

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- 46 Pocock B, van Wanrooy B, Strazzari S, Bridge K, *Fifty Families – What unreasonable hours are doing to Australians, their families and their communities* ACTU, July 2001 p. 56
- 47 A term borrowed from the ABA Commission on Women in the Profession, Deborah Rhode *An Unfinished Agenda Women in the Legal Profession 2001*
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- 49 Mercer Cullen Egan Dell *Remuneration and Work Conditions Survey 2001*
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- 52 For example, Blake Dawson Waldron circulates a newsletter to all their absent staff including those on maternity leave and those on overseas postings

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- 56 Graham D, cited in Siobhan Morrissey "Training in subtle skills", *Perspectives* Vol 10, No. 1, Spring/Summer 2001 p. 13
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- 77 Section 52 – 150 of the *Income Tax Assessment Act 1997*.
- 78 Sections 38 – 140 – 38 – 150 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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The Law Society of New South Wales