

# Advancement of Women in Law Firms: Best Practice Pilot Research Project

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August 2017



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## ACKNOWLEDGEMENTS

**Women Lawyers Association of NSW (WLANSW):** The researchers acknowledge the partnership and support of the WLANSW, including their assistance in recruiting firms to participate in this research. In particular, we acknowledge Ms Lee-May Saw, the immediate past President, who was part of developing the original research proposal, Ms Susan Price, who first initiated the Data Comparison Project, and members of the Workplace Practices Sub-Committee of WLANSW who have continued to support this project.

**Law Firms and Participants:** The WLANSW and the researchers thank the Law Firms, and their managing partners, who supported this pilot research project and gave so generously of their time. Thank you also to the women lawyers who agreed to be interviewed and shared their views and experiences with us.

**Legal Intersection Research Centre and the School of Law at the University of Wollongong:** The researchers acknowledge the Legal Intersections Research Centre and the School of Law at the University of Wollongong for their financial and inkind support that made this research possible.

# 1 EXECUTIVE SUMMARY

This report documents the findings of a pilot research project investigating current best practices, operating within national law firms in Australia, that support women lawyers in their advancement to partnership and other leadership positions. The project responds to the significant under-representation of women in senior positions within the legal profession, and their higher rates of attrition.

Academic research and professional body reports suggest that current diversity and inclusion initiatives across the private sector are not resulting in significant change to advancement, retention and attrition issues for women. However, work done by the Women Lawyers' Association of New South Wales (WLANSW) highlights the fact that some firms have made better progress than others in increasing the numbers of women in senior and leadership positions. The WLANSW Data Comparison Project (DCP) provides a comparison of large Australian law firms on a number of gender and diversity initiative criteria, starting in 2012. The DCP provided a starting point for this pilot project, allowing identification of the best performing firms on gender and diversity criteria. The four firms participating in the pilot project were either among the top firms in the DCP, or had implemented particularly innovative diversity initiatives.

Each firm provided written diversity strategies, policies and programs, and four lawyers were interviewed: the managing partner and three female lawyers – an equity partner, Senior Associate and a lawyer, all of whom were chosen from a list of female lawyers provided by each firm. The interview questions were based on the themes and recommendations for best practice identified in the international scholarly research and professional body reports, and also included open-ended questions allowing for identification of issues not addressed directly in the questions, as well as the interviewees' views on the most effective initiatives adopted.

This pilot qualitative research study reveals that four of the top-achieving national law firms in Australia on gender equity criteria are collectively engaging with many of the best practice initiatives for diversity and inclusion recommended by the current national and international research and scholarship. The recommendations reflect this international best practice. It is also important to note that all of the recommendations below are currently in place in Australian law firms that lead the way in diversity and inclusion of women. They set the 'gold standard' for law firms in Australia, and all large and medium sized law firms should consider adopting these recommendations.

## 1. Commitment to Diversity at the Top of the Firm

- a) Establish a diversity committee which is made up of partners at both the practice group level and senior management level.
- b) Implement diversity key performance indicators (KPIs) for managing partners, practice or unit heads and other managers.
- c) Consider implementing targets for women in partnership (including equity partnership) and leadership roles, including the Board, Executive team, practice heads and significant client relationship roles.
- d) Conduct reviews of pay equity, including reviewing the performance appraisal process, and what lawyers are being paid, for gender bias and part-time/full-time bias.
- e) Monitor workflow allocation from the top for gender bias
  - i. Use high level statistics combined with fine-grained analysis at the practice group level to track potential unconscious gender bias and ensure merit is rewarded
  - ii. Look underneath billable hour statistics to efficiency to see who is working most productively
  - iii. Give practice managers KPIs that include gender neutral workflow allocations

## 2. Firm Culture

- a) Develop cultural leadership by encouraging women in leadership positions to 'bring their whole selves to work'.
- b) Ensure male partners are a part of actively setting the culture and tone of the firm in terms of gender diversity.
- c) Commit to intersectional diversity beyond gender alone.

## 3. Mentoring and Affinity Groups

- a) Implement an integrated series of mentoring programs for each level of lawyers, for example:
  - i. New lawyers
  - ii. Mid-level lawyers

- iii. Senior Associates: leadership pathways programs preparing associates for partnership including training in client retention and management, etc. Ensure that women are adequately represented in these programs.
- iv. New Partners
- b) Educate the firm, especially men in the firm, as to why mentoring and affinity groups are necessary in order to combat resentment.
- c) Allow mentees to indicate a preference for particular people as mentors, or for a mentor within or outside the practice group.
- d) Develop affinity groups for working parents and carers.
- e) Develop and encourage 'sponsorship' relationships for both women and men Senior Associates
  - i. Identify existing informal sponsorship and do a fine grained analysis for unconscious bias by looking at performance reviews, hours, and the whole range of contributions to the firm
  - ii. find ways to allow conversations about sponsorships to open up
  - iii. consider implementing formal sponsorship programs
  - iv. Sponsors should be senior partners or those with significant input into partnership decision-making

#### **4. Flexible Work, Part Time and Job Sharing Policies**

- a) Encourage rethinking working and living within practice groups, and provide examples from within the firm or in other firms where practice groups have high proportions of members working flexibly:
  - i. break down 'silos', and consider developing broader areas of expertise as stimulating, rewarding, and even inspiring;
  - ii. develop a team approach to flexible work across a practice area, including collaborating on matters and developing strong briefing and debriefing practices;
  - iii. ensure that lawyers who work flexibly maintain client contact;
  - iv. recognise the value and talent of lawyers and value retaining high performing lawyers;
  - v. value team work and achievements alongside individual achievements; and
  - vi. balance profits and income with working and living well.
- b) Allow and encourage flexible and remote work practices across all levels of seniority and all genders.
- c) Ensure that lawyers working flexibly continue to receive interesting, challenging and quality work.
- d) Communicate with clients in relation the style of work and the work environment in order to manage expectations.
- e) Develop strategies that ensure that parents who have taken time out to have children and then return to flexibly work, are reintegrated in a way that is as supportive and protective as possible to minimise damage to their careers. For example, keeping lawyers involved with clients while on parenting leave.
- f) Consider providing access to personalised administrative services.

#### **5. Self Assessment**

- a) Include diversity questions in exit interviews and staff surveys. Ensure that information gathered is provided to management and diversity committees.

#### **6. Criteria for Partnership and Partnership Track**

- a) Make the criteria and process for partnership clear and transparent and communicate it to lawyers.
- b) Value people management, team leadership, and developing and mentoring younger lawyers as an aspect of the criteria for partnership.
- c) Ensure that other criteria for partnership, beyond fee-generating activities, are communicated to lawyers and Senior Associates.
- d) Actively manage the career expectations of mid-career lawyers.

#### **7. Strategies Supporting Women's Advancement to Partnership**

- a) Implement strategies to support senior people to work flexibly, including at equity partner level.
- b) Develop IT strategies to support people working flexibly and remotely.
- c) Provide presentation skills and other development workshops.
- d) Provide a kids' room for school holiday periods.

### Next Steps

The research conducted also suggests that lawyers and Senior Associates lack clarity around the criteria for partnership, and that both partners and associates identify some subjectivity in the nature of the assessment and balancing of the criteria. Women at Senior Associate level continue to identify barriers to partnership, issues around communication of criteria for advancement to partnership, clarity of processes for performance review, clarity of information regarding whether or not one is on partnership track, and management of progression.

The research also suggests that addressing under-representation at senior levels in large law firms, and the criteria for advancement, will require rethinking the competencies required for successful law firm practice and, in parallel, reshaping the models and criteria for partnership and equity partnership with careful attention to research on diversity, especially issues of firm culture and values.

This project has therefore been a pilot for a larger, four part project which would involve: first, reviewing existing Australian and international literature to identify effective gender equity strategies in law firms and, second, a full scale qualitative research project on effective gender equity strategies operating in law firms across Australia. Third, such a project would review performance and partnership criteria for bias, and finally investigate and produce a best performance measurement and partnership model that recognises the full range of competencies necessary for successful law firms. It would investigate scholarship across the areas of diversity and competencies and would pursue the following key recommendations of the NARS Report<sup>1</sup> including:

- reviewing existing Australian and international literature to identify effective gender equity strategies in law firms (88);
- research effective gender equity strategies operating in law firms across Australia (88);
- review performance/promotion criteria to ensure they are 'bias free' (91); and
- investigating performance measurement models which include revenue generation not exclusively limited to direct billable hours, and recognition of the full range of competencies necessary for law firm success in the twenty-first century, to develop new partnership models available to law firms (91).

The findings of the pilot project addressed in this report would feed into this larger, collaborative project, which will respond to calls for research done in partnership between academics, professional bodies and law firms.<sup>2</sup> It will focus on producing new models for partnership that value all competencies necessary for law firm success in the 21<sup>st</sup> century, for reaching diversity goals, equity and justice, and for shifting firm culture consistent with these changes. The performance measurement and partnership model produced would be designed for implementation through a three-stage scheme. This project will take the research and initiatives on diversity in law firms to the next level; the identification of best practices and development of partnership models for diversity and inclusion, will, taken together, position the Australian legal profession and collaborative organisations, such as the LCA, AWL and WLANSW, at the leading edge on diversity and inclusion internationally.

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1 Law Council of Australia, 'National Attrition and Re-Engagement Study (NARS) Report' (2013) <[https://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/NARS%20Report\\_WEB.pdf](https://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/NARS%20Report_WEB.pdf)> ('NARS Report').

2 A Pinnington and J Sandberg, 'Lawyers' Professional Careers: Increasing Women's Inclusion in the Partnership of Law Firms' (2013) 20(6) *Gender, Work and Organisation* 616; S Lopes, 'High Performers Are Not Superheroes: Bridging Exclusive and Inclusive Talent Management Approaches for Law Firm Sustainability' (2016) 23(2) *International Journal of the Legal Profession* 207, 224.

## 2 INTRODUCTION

### 2.1 Background and Rationale for the Pilot Project

This report documents the findings of a pilot research project conducted by Professor Nan Seuffert and Dr Trish Mundy of the Legal Intersections Research Centre at the University of Wollongong (UOW) in partnership with the Women Lawyers' Association of New South Wales (WLANSW). The purpose of the research was to investigate current best practices, operating within national law firms in Australia, that support women lawyers and their advancement to partnership and other leadership positions.

The project responds to the significant under-representation of women in senior positions within the legal profession, and their higher rates of attrition. Women have been graduating from law schools for over 100 years, and in recent decades in Australia the numbers of women graduating has equalled and now surpassed the number of men.<sup>3</sup> The figures for women and men graduates in 2015 were 62.3% and 37.6% respectively.<sup>4</sup> In addition, at least over the last five years, women have been entering the legal profession at a much higher rate than men.<sup>5</sup> Yet women are still grossly underrepresented at the top levels of the profession, particularly private practice. Recent figures suggest that just 24% of partners in Australia's major firms,<sup>6</sup> and just 3.4% of all managing partners, are women.<sup>7</sup> In New South Wales, women represent 25.8% of partners across all law firms.<sup>8</sup> These figures are considerably lower for equity partnerships at 15.6% across Australia's large law firms.<sup>9</sup> In fairly stark contrast to this, women now make up approximately 60% of lawyers at Senior Associate level.<sup>10</sup> In some of the large national law firms this figure is notably higher, with women representing up to 82.6% of Senior Associates.<sup>11</sup>

Scholarship, spanning recent decades and carried out by mainstream professional bodies, women's professional associations and academics across a number of disciplines, indicates that current diversity and inclusion initiatives are not resulting in significant advancement of women to senior positions in large law firms. Glass ceilings continue to operate for women. This pilot project, investigating a small sample of large Australian firms at the top of the diversity charts and engaging in innovative diversity and inclusion initiatives, documents current best practices, in order to set the stage for a larger project intended to map out best practices for the future. The pilot project proceeded in two steps: first, reviewing existing Australian and international research and scholarship to identify effective gender equity strategies in law firms and, second, undertaking interviews with managing partners and women lawyers to discuss innovative and effective gender equity strategies operating in these large firms. The first step of the project investigated scholarship in the area of diversity and inclusion, which revealed a critique of the competencies that are recognised as relevant to partnership in many firms. It also revealed that there was a gap in the research connecting diversity and inclusion with the 'competencies movement'. Research on competencies identifies, categorises and measures competencies necessary for particular jobs. The result of this research, published in the *International Journal of the Legal Profession*,<sup>12</sup> highlights the potential of the use of competencies research to address the issues raised by the diversity scholarship for reshaping law firm practice and partnership models to respond to issues of advancement, attrition and lack of re-engagement of women in law firms.

This report is divided into four substantive parts. Part three of the report presents the results of step one of the project, analysing the problem in Australia and internationally and then presenting the research identifying

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3 See e.g. Women Lawyers Association of New South Wales, 'Submission to the Workforce Gender Equity Agency' (2014) <<https://womenlawyersnsw.org.au/wp-content/uploads/WLANSW-WGEA-submission-2014.pdf>> ('WLANSW Submission'); National Association of Women Lawyers, 'Report of the Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms' (2015) <<http://www.nawl.org/p/cm/ld/fid=82>>; L Rikleen, 'Women Lawyers Continue to Lag behind Male Colleagues: Report of the Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms' (National Association of Women Lawyers, 2015) <<http://www.nawl.org/2015nawlsurvey>> ('2015 NAWL Survey Report').

4 Graduate Careers Australia, 'Bachelor graduates: all' (21 June 2015) <<http://www.graduatecareers.com.au/Research/GradJobsDollars/BachelorAll/Law/index.html>>.

5 The 2014 National Profile of the Australian legal profession shows that "Since 2011, there has been a significant increase in the number of female solicitors in the profession. The number of female practising solicitors increased by +19.3%, while the number of males increased by +5.4%. This suggests that the increase in the overall number of practising solicitors between 2011 and 2014 is being driven by an overall increase in female practising members." Urbis, '2014 Law Society National Profile' (Law Society of New South Wales, April 2015) 3.

6 N Papadakis and E Tadros, 'Women Now 24 per Cent of Law Firm Partners' [2016] *Australian Financial Review* <[www.afr.com/leadership/women-now-24pc-of-big-law-firm-partners-20151216-glp6ly](http://www.afr.com/leadership/women-now-24pc-of-big-law-firm-partners-20151216-glp6ly)>. The author notes that while this figure has increased from 21% in 2014, some of that percentage growth can be attributed to a drop in the overall number of male partners at these firms.

7 L Mezrani, 'Law's Disappointing Gender Report Card' [2014] *Lawyers Weekly* <<http://www.lawyersweekly.com.au/news/15901-Law-s-disappointing-gender-report-card>>.

8 Law Society of New South Wales, '2014 Profile of the Solicitors of New South Wales Final Report' (March 2015) 23.

9 Mezrani, above n 7. Mezrani was reporting on the Workplace Gender Equality Agency figures from the 2013-2014 period.

10 M Papadakis, 'Women Lawyers Dominate Senior Ranks, Eye Law Firm Partnerships' [2015] *Australian Financial Review* <[www.afr.com/business/legal/women-senior-lawyers-amass-to-knock-on-partnership-door-20150630-gilol3](http://www.afr.com/business/legal/women-senior-lawyers-amass-to-knock-on-partnership-door-20150630-gilol3)>.

11 Women Lawyers Association of New South Wales, 'Law Firm Data Comparison Table 2015' (2015) <<https://womenlawyersnsw.org.au/wp-content/uploads/WLANSW-Law-Firm-Comparison-2015-Table.pdf>>.

12 Nan Seuffert, Trish Mundy and Susan Price, 'Diversity Policies Meet the Competency Movement: Towards Reshaping Law Firm Partnership Models for the Future' [forthcoming] *International Journal of the Legal Profession*.



current best practices internationally. Part four of the report provides an overview of the qualitative component of the research project, including an outline of its methodology and analytical framework. Part five presents the analysis of the interview data, highlighting current best practice operating within four large Australian law firms. Finally, the report concludes in two parts. The first part of the conclusion provides specific recommendations for current best practice in Australia arising from the pilot project that should be considered by all law firms with a commitment to diversity and inclusion of women in senior positions. It then presents the case for a larger research project collaboration between academics, professional bodies and law firms. The collaboration would build on this pilot project in relation to best practices and then investigate the use of competencies research to develop new partnership models for the 21<sup>st</sup> century, aimed at placing Australian private legal practice at the forefront internationally, with best practices for gender diversity and inclusion.

### 3 LITERATURE REVIEW

This part provides an overview of the relevant literature, beginning with an analysis of the problem of the under-representation of women in leadership roles within the legal profession in Australia, followed by a summary of the problem internationally. It then canvasses the diversity and inclusion literature to identify current international best practice, and investigates innovative research and practices in North America.

#### 3.1 Analysis of the Problem

Women are graduating from law school and entering the legal profession in greater numbers than ever before, yet their career patterns point to a clustering of women lawyers at entry and Senior Associate levels, significant under-representation in senior positions within the profession, and higher rates of attrition. The research and analysis on this problem point to a number of interlocking explanations. These can usefully be categorised as, first, processes of social reproduction of gendered power differentials, sometimes reflected in entrenched gender stereotypes, and including hierarchical segmentation of workforces and tasks, rewards and career expectations, which reproduce traditional gender hierarchies with men in positions of power.<sup>13</sup> Second, organisational structure, and restructuring of firms and the profession, including the stratification of partnership through tiers, added to the requirement of increased billable hours for promotion, operates in ways that favour men and male-identified traits, and contribute to the lack of advancement of women.<sup>14</sup> Gender discrimination and exclusionary practices in the workplace and in society,<sup>15</sup> including women receiving unsatisfying and low-value work assignments, being passed over for career development opportunities, combined with implicit and explicit ingrained sexual harassment, is a third explanation.<sup>16</sup> Cultural barriers such as professional ideology, and the differing ways in which men and women understand their careers and those of other men and women, is a fourth explanation. The next two sections track the problem in Australia and internationally.

##### 3.1.1 The Australian picture

Gender based discrimination and sexual harassment have long been identified as problems in the legal profession.<sup>17</sup> In Australia, a 2000–01 NSW practising certificate survey found that almost one-quarter of female respondents reported having experienced harassment or discrimination on the basis of their gender, compared to 3% of male respondents.<sup>18</sup> This has not changed in the intervening years: a national study commissioned by the LCA in 2013 on the attrition and re-engagement of women in the legal profession<sup>19</sup> reaffirms the high levels of gender based discrimination, with half of all women respondents reporting experiencing discrimination due to gender (compared to one in ten men), and one in four having experienced sexual harassment in their workplace.<sup>20</sup> About one quarter of women also reported having experienced discrimination due to family or carer responsibilities.<sup>21</sup> Studies have also drawn attention to the disparity between male and female earnings; men earn higher incomes than women overall at both the lower and higher end of the salary range.<sup>22</sup>

Structural and cultural barriers faced by women seeking to utilise flexible work arrangements have also had ‘profound effects’,<sup>23</sup> often overlapping and interacting with gender-based discrimination. Cultural barriers arise when women who seek to utilise flexible work practices are viewed by partners, managers and co-workers as less

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13 See e.g. Pinnington and Sandberg, above n 2, 616–617; E Wald, ‘Big Capital: Pink and Blue, Black and White’ (2015) 83 *Fordham Law Review* 2509.

14 See e.g. Law Society of New South Wales, ‘After Ada: A New Precedent for Women in Law’ (NSW Law Society, 2002) (*After Ada Report*); A Jaffe et al, ‘Retaining and Advancing Women in National Law Firms’ (Stanford Law School, 2016) <<https://law.stanford.edu/publications/retaining-and-advancing-women-in-national-law-firms/>> (*Advancing Women in Law Firms Report*); A Bruck and A Canter, ‘Supply, Demand, and the Changing Economics of Large Law Firms’ (2008) 60 *Stanford Law Review* 2087, 2095–2096; E Wald, ‘Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms’ (2010) 78 *Fordham Law Review* 2245, 2256–2257.

15 After Ada Report, above n 14; T Hutchinson and H Skousgaard, ‘Women in the Queensland legal workplace: a snapshot’ (2008) 13 *Deakin Law Review* para 37; G Frost, G Trifiletti and K Will, ‘Taking up the Challenge: Women in the Legal Profession’ (Victorian Women Lawyers Association, 1999); F McLeod and L Kennedy, ‘Women in Practice’ in P Easteal (ed), *Women and the Law in Australia* (LexisNexis Butterworths, 2010) 350, 350,353.

16 After Ada Report, above n 14, 39; Wald, above n 14; D Rhode, ‘Commission on Women in the Profession, Balanced Lives: Changing the Culture of the Legal Practice. American Bar Association’ (2001) <<http://womenlaw.stanford.edu/pdf/balanced.lives.pdf>> (*Balanced Lives Report*).

17 Margaret Thornton and Joanne Bagust, ‘The Gender Trap: Flexible Work in Corporate Legal Practice’ (2007) 45(4) *Osgoode Hall Law Journal* 773; D Rhode, ‘The Profession and Its Discontents’ (2005) 61 *Ohio State Law Journal* 1335; J Hagan and F Kay, *Gender in Practice: A Study of Lawyers’ Lives* (Oxford University Press, 1995) 54; After Ada Report, above n 14, 14. A 2000–2001 New South Wales practising certificate survey found that almost a quarter of female respondents reported having experienced harassment or discrimination on the basis of their gender, compared to 3% of male respondents.

18 After Ada Report, above n 14, 14.

19 NARS Report, above n 1. The NARS Report reported high levels of gender based discrimination and sexual harassment (32–33).

20 Ibid 8.

21 Ibid.

22 See for example, Urbis, above n 5, 16; Hutchinson and Skousgaard, above n 15, 26.

23 Ibid 19; Thornton and Bagust, above n 17.

ambitious and less committed to the firm.<sup>24</sup> These cultural barriers lead to structural barriers. Where alternative and flexible workplace policy and practices are offered, they are often designed and implemented in a way that causes further marginalisation of those with carer responsibilities.<sup>25</sup> Use of flexible work practices can result in assignment to background or support roles, where work involves files with 'less profile, less client contact and reduced opportunities to develop legal skills and a client base', resulting in the notion of 'pink files' and 'blue files'.<sup>26</sup> This inferior work, combined with suspicion of bodily absence from the workplace and continued resistance to women in roles of authority, has been found to be used to confine women to subordinate roles and deny them partnership.<sup>27</sup>

A study by Bagust in 2005-06 with 10 major corporate and commercial firms operating in Melbourne with national/international profiles links the 'pink files' given to women, which may include regimented and routine tasks like updating precedent documents and doing bulk mortgage work, to facilitating the advancement on partnership track of those who are doing the litigation, working with clients and closing deals.<sup>28</sup> It is only because women do this undervalued work that the firm can operate and continue to make high profits, and the men can advance to partnership with less competition. The NARS Report confirms the continued existence and impact of these cultural and structural barriers for women lawyers, noting that engaging in flexible work practices, combined with discrimination, can hinder progression to seniority, contributing to fewer women in leadership roles.<sup>29</sup>

Women's marginalisation within the profession has clear links with their attrition rates. In Australia women are leaving the private profession in higher numbers, many within five years of entering.<sup>30</sup> This means the private sector is losing significant talent. The result of the interaction of a range of factors, including gender bias and difficult work and family balancing decisions, has been that progression of women to senior ranks within the profession has been slow, particularly given the concentrated work of organisations such as women lawyers' associations and other professional bodies in promoting the status and position of women.

The structures of large law firms internationally have undergone significant changes in recent decades, and Australia is no exception. While the number of associates in these law firms has traditionally outstripped the number of partners by three or more, the exponential growth in firm size has resulted in higher numbers of associates, fewer partners, a longer period to partnership, and increased use of salaried partners, paralegals and second-tier associates not on partnership track.<sup>31</sup> Associates on partnership track have come to form only a core of these employees, and women are not nearly as likely to be in this core.<sup>32</sup> The movement from one-tier to multi-tier partnership structures has resulted in a gendered stratification of equity and salaried partners.

The impact of the large law firm partnership structure on women is said to be exacerbated by the time-based expectations the model creates - the billable hour being the most recognisable and problematic expectation. High billable hours are essential for progression in the large law firm partnership structure, as both a means of competition among lawyers, and as a means for partners to gain greater income and influence.<sup>33</sup> In Australia, *After Ada*, a report by the Law Society of New South Wales in 2002, concluded that the expectation of lawyers to work longer hours causes systematic disadvantage for women in the profession by impacting on them in two significant ways:

First, because women's partners [professional men] are increasingly working longer hours, the greater share of carer's responsibilities falls on their female partners who spend more time [on family responsibilities]... Second, the growth in hours standards in some workplaces means that those with more family responsibilities [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.<sup>34</sup>

In the US Rhode and Ricca explain that the normative assumption created by the time-pressured partnership

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24 P Easteal et al, 'Flexible Work Practices and Private Law Firm Culture: A Complex Quagmire for Australian Women Lawyers' (2015) 15(1) *QUT Law Review* 30, 34-35; Victorian Women Lawyers' Association, 'A 360° Review: Flexible Work Practices - Confronting Myths and Realities in the Legal Profession' (2005) <<https://www.vwl.asn.au/downloads/VWL%20360DegreeReport.pdf>>.

25 Victorian Women Lawyers' Association, above n 24, 8; Pinnington and Sandberg, above n 11, 626.

26 K Eastman, 'Sex Discrimination in the Legal Profession' (2004) 27(3) *University of New South Wales Law Journal* 892, 874.

27 Thornton and Bagust, above n 17, 795-796.

28 J Bagust, 'Keeping Gender on the Agenda: Theorising the Systemic Barriers to Women Lawyers In Corporate Legal Practice' (2012) 21(1) *Griffith Law Review* 137, 155; see Hagan and Kay, above n 17, 33-40.

29 NARS Report, above n 1, 5.

30 Ibid 51; Law Society of New South Wales, 'Thought Leadership 2011: Advancement of Women in the Profession' (NSW Law Society, 2011) ('*Thought Leadership 2011 Report*').

31 Hagan and Kay, above n 17, 93-95.

32 Ibid.

33 Balanced Lives Report, above n 16.

34 *After Ada* Report, above n 14, 9.

model is that the “ideal” lawyer needs to have ‘total loyalty and commitment’ to the profession.<sup>35</sup>

Pinnington and Sandberg argue that one of the reasons for the gender disparity of equity partners is the generally accepted understanding among male and female lawyers that the role of equity partner requires a commitment to privilege work over family responsibilities.<sup>36</sup> The masculinist model of the ideal lawyer, as well as the tenacity of male professional culture, converge with, and reproduce, these understandings about privileging work over family.<sup>37</sup>

### 3.1.2 The International picture

The position for women internationally is similar to that in Australia. In the US, the American Bar Association reported that in the 2010-2011 academic year 47.3% of law school graduates were women.<sup>38</sup> Despite this, a relatively low number of women stay in ‘BigLaw’ and even fewer progress to its highest ranks.<sup>39</sup> In 2015 in the top 200 US law firms women represented only 21.5% of all partners, 18% of equity partners, 18% of managing partners and 44.8% of associates; they earned just 80% of what their male counterparts doing comparable work, hours and revenue generation earned.<sup>40</sup> Similar trends exist in Canada where women represent around 60% of all law graduates<sup>41</sup> yet comprise around 45% of practising members of Canadian law societies.<sup>42</sup> Figures from 2009 show that only 26% of Canadian lawyers in private practice are women and even fewer are in partnership in law firms.<sup>43</sup> A 2010 report prepared by the Law Society of Upper Canada (LSUC) found that women make up 46% of associates and employees<sup>44</sup> and 20% of partners at private law firms<sup>45</sup> while a 2013 leadership report prepared by LSUC stated that as at August 2012 only 7% of women in practice were partners in private law firms.<sup>46</sup>

Further, the international scholarship emphasises that the low numbers of women in senior and leadership positions in firms, and the difficulty in countering the entrenched problems, has been exacerbated in recent decades. It highlights how the problems with law firm structures, increased stratification of partnership models and the emphasis on billable hours, discussed above in relation to Australia, have been compounded in recent years by the organisational restructuring of law firms, and the restructuring of the legal profession more broadly:

Large law firms are experiencing a shift in professional ideology. Competitive meritocracy, an ideology that rose to prominence in the 1960s and 1970s and has come to dominate large law firm thinking since the 1980s, is in decline and is gradually being replaced by a hypercompetitive professional ideology.<sup>47</sup>

Firms have become increasingly commercialized, and subsequent to the Global Financial Crisis (GFC) a ‘new normal’ has emerged for large law firms.<sup>48</sup> The internationalisation and globalisation of markets, deregulation and privatisation of state-owned enterprises, internationalisation of primary and secondary securities markets as well as government moves to weaken professional monopolies and open professions to competition, have all contributed to the commercialisation and globalisation of firms in recent decades.<sup>49</sup>

Subsequent to the GFC, in the new normal, a combination of client demands has increased the pressure necessary to maintain the top earners. These include clients’ insistence on shifting low grade work previously

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35 D Rhode and L Ricca, ‘Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel’ (2015) 83 *Fordham Law Review* 2483, 2504; see also *Advancing Women in Law Firms Report*, above n 14, 20.

36 Pinnington and Sandberg, above n 11, 624.

37 Hilary Sommerlad and Peter Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Ashgate, 1998) 155, 259–260; Thornton and Bagust, above n 17, 798.

38 American Bar Association, Commission on Women in the Profession, ‘A Current Glance at Women in the Law’ (American Bar Association, 2016) 4.

39 L Jackson, ‘Minority Women Are Disappearing from BigLaw—and Here’s Why’ [2016] *ABA Journal* 2 <[http://www.abajournal.com/magazine/article/minority\\_women\\_are\\_disappearing\\_from\\_biglaw\\_and\\_heres\\_why](http://www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why)>.

40 American Bar Association, above n 38, 2.

41 Catalyst, ‘Catalyst Quick Take: Women in Law in Canada and the US’ (2015) <[http://www.catalyst.org/knowledge/women-law-canada-and-us#comment\\_response](http://www.catalyst.org/knowledge/women-law-canada-and-us#comment_response)>.

42 Federation of Law Societies of Canada, ‘2014 Statistical Report’ (Federation of Law Societies of Canada, 2014) <<http://docs.flsc.ca/2014-Statistics.pdf>>.

43 A Bassin and L Ridgedale, ‘Two Countries, Same Malaise: Flight of Female Lawyers in Canada Mirrors US Exodus’ (2009) 28(1) *Of Counsel* 7, 7–9.

44 M Orstein, ‘Racialisation and Gender of Lawyers in Ontario’ (Barreau de Haut-Canada, Law Society of Upper Canada, 2010) 24.

45 A Medekar, ‘Gender Equality Gap and the Legal Profession’ (Canadian Bar Association, 2015) <<https://www.cba.org/Sections/Equality-Committee/Articles/2015/Jullet/Gender-equality-gap-and-the-legal-profession>>.

46 Law Society of Upper Canada, ‘Justicia Guide to Women’s Leadership in Law Firms’ (Barreau du Haut, Law Society of Upper Canada, 2013) 21.

47 Wald, above n 14, 2245.

48 Mottershead & Magliozzi note that the “new normal” is “a term that has been used from early 2010 to describe the shift in the way lawyers and law firms delivered legal services pre and post the recent global financial crisis.”: T Mottershead and S Magliozzi, ‘Can Competencies Drive Change in the Legal Profession?’ (2013) 11(1) *University of St. Thomas Law Journal* 51, 51. Lopes also uses the term “new normal” to refer to the intensification of the pre-GFC developments discussed here, along with increasing pressure for faster service, increased quality and lower fees: Lopes, above n 2, 208. Sommerlad also notes the deepening of existing trends in recent years: Hilary Sommerlad, “‘A Pit to Put Women In’: Professionalism, Work Intensification, Sexualisation and Work–life Balance in the Legal Profession in England and Wales’ (2016) 23(1) *International Journal of the Legal Profession* 61, 62.

49 D Muzio and S Ackroyd, ‘On the Consequences of Professionalism: Recent Changes in the Legal Labour Process’ (2005) 32(4) *Journal of Law and Society* 615, 615–618; John Flood, ‘Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice’ (1996) 3(1–2) *International journal of the legal profession* 169, 172–174, 177–182.

done in house to firms, for inclusion in package deals on fees, pushed down by increased competition. Demands for flexibility, innovation and lower fees have all contributed to requiring lawyers to adapt, project manage and become entrepreneurial.<sup>50</sup> The new normal includes a further intensification of work, a new dominance of client demands, downward pressure on firm charges, an erosion of collegiality and hypercompetitive ideology dominating interactions between and within firms.<sup>51</sup> It has been argued that the organisational restructuring of recent decades also presents barriers to women's progression into senior roles, interacting with, and integrating neoliberal and neoconservative relationalities and a resurgence in misogyny and sexualisation of women more generally in society to perpetuate women in marginal positions in law firms.<sup>52</sup> Margaret Thornton has also written of this 'neoliberal turn' and its contribution to the corporatisation and transformation of the legal profession, such that questions of diversity are said to be left to the 'invisible hand of the market'.<sup>53</sup> The statistics referenced in this section and the one above suggest that the 'invisible' hand is not responsive to issues of diversity and inclusion.

### 3.2 Best Practice in Diversity Initiatives

Research by academics and professional bodies in the United States and Canada in recent years has identified current best practices for law firms in relation to diversity and inclusion.<sup>54</sup> These studies cavass a range of practices that have been implemented in order to achieve diversity goals, sometimes analyse the success of these initiatives, and make recommendations for best practices based on these initiatives.

In the United States Rhode and Ricca's recent study, interviewing managing partners or chairs of 30 of the nation's largest law firms and general counsel from 23 Fortune 100 companies, focused on providing the first overview of the problem of lack of diversity generally from the perspective of leaders of these firms and corporations, and on identifying best practices and the obstacles to these practices.<sup>55</sup> The National Association of Women Lawyers Foundation reported in 2012 on women's initiatives in law firms (defined as firm-wide 'women's' initiatives' or 'women's affinity' groups) focusing on the constitution, structure and scope, as well as the impact, of these groups.<sup>56</sup> A group of Stanford Law School students and academics have produced, in 2016, an overview of the scholarship and research on the problems with the retention and advancement of women lawyers in elite national law firms, with a comprehensive set of findings and recommendations gleaned from the literature.<sup>57</sup> Professional bodies in the United States and Canada have also focused on diversity beyond gender, including racial and ethnic diversity.<sup>58</sup>

The recommendations of these studies are remarkably consistent. Best practices have been identified starting prior to law school, moving through recruitment and hiring, retention, firm culture and inclusion, professional development, leadership and regulation and diversity initiatives.<sup>59</sup> For example, Rhode & Ricca recommend as a first step a commitment to diversity at the top of the firm, which is structurally implemented in recruiting targets, evaluation and reward systems.<sup>60</sup> Self-assessment through periodic surveys, interviews with former and departing lawyers, bottom up evaluations and ongoing monitoring are also key recommendations.<sup>61</sup> Mentoring, affinity groups and work/life/family balance polices that recognise and encourage diversity were, not surprisingly, also recommended. The American Bar Association goes further, making recommendations in relation to structural barriers, many of which call for transparency in determining compensation for partners, to provide equitable recognition of credit for attracting clients, developing client business and loyalty and managing and expanding client relationships, as well as rewarding behaviours that promote institutional sustainability, such as leadership and committee participation.<sup>62</sup>

In Australia the NARS Report recommended the identification of effective gender equity strategies operating

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50 Lopes, above n 2, 208.

51 Sommerlad, above n 48, 62, 65.

52 Ibid 77.

53 M Thornton, 'The New Knowledge Economy and the Transformation of the Law Discipline' (2012) 19(2-3) *International Journal of the Legal Profession* 265, 268.

54 See Rhode and Ricca, above n 35; Advancing Women in Law Firms Report, above n 14; J Bouchard and E Quansah, 'Law Society Studies and Scan of Best Practices' (Barreau du Haut, Law Society of Upper Canada, 2014) ('*Law Society Studies Best Practices Report*').

55 Rhode and Ricca, above n 35, 2483, 2486.

56 S Scharf, 'Report of the NAWL Foundation's National Survey of Women's Initiatives: The Structure, Strategy and Scope of Women's Affinity Groups in Law Firms' (National Association of Women Lawyers Foundation, 2012) <<http://www.nawl.org/cm/ld/fid=82>>.

57 Advancing Women in Law Firms Report, above n 14.

58 See, e.g. American Bar Association, Commission on Women in the Profession, 'Visible Invisibility: Women of Color in Fortune 500 Legal Departments' (American Bar Association, 2012); Law Society Studies Best Practices Report, above n 54; K Woodson, 'Race and Rapport: Homophily and Racial Disadvantage in Large Law Firms' (2015) 83 *Fordham Law Review* 2557.

59 See, e.g. Law Society Studies Best Practices Report, above n 54; Rhode and Ricca, above n 35.

60 Rhode and Ricca, above n 35, 2502.

61 Ibid 2503; Advancing Women in Law Firms Report, above n 14, 52-53; Law Society Studies Best Practices Report, above n 54, 8, 24.

62 L Rikleen, 'Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation, American Bar Association' (2013) 31-45 <[http://www.americanbar.org/content/dam/aba/administrative/women/closing\\_the\\_gap.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/women/closing_the_gap.authcheckdam.pdf)>.

in law firms/legal practices across Australia and internationally.<sup>63</sup> State bodies such as the Law Society of New South Wales (LSNSW) have also prioritised the advancement of women. In 2011 the LSNSW released a report on Advancement of Women in the Profession, finding that women faced barriers and impediments to career progression, particularly in the context of private practice.<sup>64</sup> The availability of flexible work practices, returning to work following maternity leave, and the need for cultural change in relation to the concept and measurement of professional success and achievement, were three key areas highlighted.<sup>65</sup> A Progress Report released in 2013 found that some progress had been made, but there was still more work to do:

The experiences described by many participants reinforced the perception that there are still barriers and impediments to be faced by women solicitors who wish to progress in their careers, and that these are more obvious in private practice than in the corporate and government segments. It became clear during the discussions that not every woman in private practice aspires to partnership and that there are many definitions of success. However, it was also apparent that women lawyers expect to have the same opportunities as men to progress to senior positions should they wish to do so.<sup>66</sup>

The LSNSW developed a Charter for the Advancement of Women in the Legal Profession for all law practices, including private firms, corporate and government practices, Legal Aid Offices and Community Legal Centres. Under the Charter voluntary signatories agree to: promote diversity in the legal profession and remove gender bias and discrimination in the workplace; drive change by developing a culture that recognises the value of women in the profession and especially in senior roles; and promote and support mentoring and encourage and support flexible work practices for both women and men.<sup>67</sup>

Consistent with the LSNSW's identification of ongoing barriers, and the NARS Report's conclusion of further work to be done, it should be noted that while firms may implement various combinations of these diversity initiatives, thus far they have been minimally effective. Rhode concludes with respect to firm initiatives in the United States that:

seldom have their diversity initiatives prompted fundamental structural changes or systematic monitoring. Rather, the most common strategies, in addition to the part-time policies noted earlier, involve diversity training, outreach efforts to increase the pool of minority lawyers and job candidates, networks and affinity groups, and formal mentoring programs. All are well-intentioned. Few are highly effective.<sup>68</sup>

Rhode also noted that diversity training and other diversity initiatives do not significantly increase representation or advancement of targeted groups. This is partly due to the fact that there is a lack of focus on institutional behaviours, few firms have made major commitments to expanding recruitment, providing scholarships and other pipeline support programs, affinity and social networks have no significant positive impact on career development and mentoring success is patchy.<sup>69</sup> The National Association of Women Lawyers (NAWL Survey) in the United States concluded its ninth annual survey in 2015 by stating that '[f]irms have made no appreciable progress [over the time tracked in the reports] in the rate at which they are promoting women into the role of equity partner' and that 'men continue to be promoted to non-equity partner status in significantly higher numbers than women'.<sup>70</sup> Similarly, in the UK it was noted that diversity initiatives, which spurred firms to trumpet a meritocracy, have 'had little impact on the hypermasculine work culture'.<sup>71</sup>

Contributing to these issues is the post-GFC 'new normal' environment in which the legal profession operates, which, as discussed, is characterised by increased dominance of clients, downward pressure on costs and focus on low-grade work. The predominance of neo-liberal attitudes to family, resulting in a resurgence in gender stereotypes that construct women as primarily responsible for social reproduction, may be further feeding the already existing hypermasculine law firm culture.<sup>72</sup> Not surprisingly then, as noted, the numbers and percentages of female equity partners are not increasing.

One intransigent problem seems to be the convergence of the increased pressures of the 'new normal' with gender discrimination and the social reproduction of male dominance within firms, and the problems identified above in the criteria for advancement to partner. These criteria may be so deeply entrenched in law firm culture that they are

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63 NARS Report, above n 1, 88.

64 Thought Leadership 2011 Report, above n 30.

65 Ibid 22.

66 Law Society of New South Wales, 'Thought Leadership: Advancement of Women in the Profession Progress Report' (NSW Law Society, 2013) 3.

67 Law Society of New South Wales, 'Charter for the Advancement of Women in the Legal Profession' <<https://www.lawsociety.com.au/ForSolicitors/AdvancementofWomen/Charter/index.htm>>.

68 D Rhode, 'From Platitudes to Priorities: Diversity and Gender Equity in Law Firms' (2011) 24 *Georgetown Journal of Legal Ethics* 1041, 1069.

69 Ibid 1069–1072.

70 2015 NAWL Survey Report, above n 3, 3.

71 Sommerlad, above n 48, 62.

72 Ibid 62–63, 68–73.

unarticulated or only partly articulated, masking gendered assumptions and effects. The Law Society of England and Wales identified the ways in which professional achievement is measured as an obstacle and barrier to the career development of women solicitors.<sup>73</sup> The emphasis on high billable hours was discussed above as a structural and cultural barrier for women. It also forms a key part of the criteria for advancement; billable hours continue as a core driver and principle measure of quality of work and assessment for promotion. However, despite the apparent importance placed on high billable hours when contending for promotion, the objectivity of the billable hour as a measure of productivity for lawyers has been questioned. The emphasis on the metric of billable hours in the criteria for partnership is said to privilege quantity over quality, to conflict with the development of good management skills, to marginalise the ability to manage projects, clients and colleagues well, and to favour men.<sup>74</sup> In the United States, the NAWL Survey recorded a significant difference in the number of hours billed by women compared with men.<sup>75</sup> It found that even though women were reported as working as long, or even longer hours than men, they nevertheless recorded fewer billable hours.<sup>76</sup> It suggests that the neutral use of the billable hour as a measurement of productivity would, for these reasons, favour men over women.

The literature highlights other reasons women may have fewer billable hours, and are disadvantaged by promotion as a reward for high billable hours: women acting on committees that cost time in billable hours;<sup>77</sup> the quality of work received by or assigned to women; the greater commitment to *pro bono* work by women;<sup>78</sup> a misperception of how hard women work leading to devaluing the hours worked; the misperception of the quality of work completed by women may lead to under-reporting of billable hours; and the lower billing rates of female partners.<sup>79</sup> There is also some evidence to suggest that even where the hours billed by men and women lawyers are the same, women still bring in less money for their work, suggesting that women may be billed at lower rates and asked to undertake more non-billable activities.<sup>80</sup> These other activities, although necessary to the success of the firm, do not feature as prominently, or at all, in the criteria for advancement. Instead, there is an emphasis on winning work and working long hours—even retaining clients is devalued. It is also argued that the criteria for making partner is inconsistent, unclear and opaque and that presenteeism is valued too highly, resulting in a culture of deception around time spent attending to personal matters.<sup>81</sup> These obstacles in criteria for partnership correlate closely with the findings of the LSNSW in 2011.<sup>82</sup>

While the intransigence of law firm culture, the assessment of lawyers' work for purposes of promotion and the criteria for partnership are sometimes identified as gender barriers, few recommendations address fundamental changes to partnership and business models. In the quote above Rhode notes that diversity initiatives do not prompt these types of fundamental structural changes or systemic monitoring. Rhode and Ricca identify the need for fundamental changes to the business model of firms, quoting a general counsel:

Until law firms make certain fundamental changes in their business model, it's going to be hard to make meaningful statistical change ... When you look at women after forty years [of being in the pipeline] and look at leadership levels, law firms don't seem to be the right stewards on these issues. ... To get beyond [current levels] firms will have to look at how people coach and invest in talent.<sup>83</sup>

Evet Simmons, a Greenspoon Marder shareholder (equity partner), interviewed by the American Bar Association in 2016, concurs that a climate of inclusiveness for women and minorities, where differences are acknowledged and valued, can only emerge once firms change the entrenched paradigm of criteria for success, based on delivery and individual contributions:

We need to be able to recognize that a woman has some value other than getting a book of business. Maybe she can assist you with managing a book of business,...We need to measure success on more than whether a person brought a client into the room. There are other intrinsic values that can grow the firm besides bringing in money.<sup>84</sup>

Other tangible benefits to a firm's business can include client services and committee work.

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73 Law Society of England and Wales, 'Obstacles and Barriers to the Career Development of Woman Solicitors' (Law Society of England and Wales, 2010) 15 ('*Barriers to Career Development Report*').

74 Advancing Women in Law Firms Report, above n 14, 18.

75 2015 NAWL Survey Report, above n 3.

76 Ibid; Advancing Women in Law Firms Report, above n 14, 18.

77 Wald, above n 13, 2511.

78 Advancing Women in Law Firms Report, above n 14, 18; 2015 NAWL Survey Report, above n 3, 9–10.

79 2015 NAWL Survey Report, above n 3, 9; Bagust, above n 28.

80 Advancing Women in Law Firms Report, above n 14, 18.

81 Barriers to Career Development Report, above n 73, 22, 24.

82 Thought Leadership 2011 Report, above n 30, 28 ('*Thought Leadership 2011*').

83 Rhode and Ricca, above n 35, 2493, quoting Susan Blount, Executive Vice President & General Counsel, Prudential Finance, Inc (nd) telephone interview.

84 Jackson, above n 39.

These critiques of the barriers to the advancement of women in the legal profession, and the flawed and exclusionary criteria for advancement, point beyond recommendations about diversity programs and flexible work practices to the need for fundamental structural changes accompanied by systemic monitoring, as suggested by Rhode, including rethinking the criteria for success and the dominant partnership model. The existing scholarship suggests that this task will best be approached through research done in partnership between academics, professional bodies and law firms.<sup>85</sup> The research also suggests that addressing under representation at senior levels in large law firms, and the criteria for advancement, will require rethinking the competencies required for successful law firm practice and, in parallel, reshaping the models and criteria for partnership and equity partnership with careful attention to research on diversity, especially issues of firm culture and values. We return to this discussion of diversity and competencies in the last section of this report, suggesting ways forward for further research.

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<sup>85</sup> Pinnington and Sandberg, above n 11, 628 conclude that “academic researchers have a role to play in developing theories of ...[law firms] which represent more adequately issues of employee diversity, professional careers and the glass ceiling, such as the inclusion of women in the equity partnership.” The involvement of practitioners in a study, as participants or as researchers, would be particularly valuable and would overcome access constraints: Lopes, above n 2, 224.



## 4 METHODOLOGY

The Australian and international scholarship and professional body reports suggest that current diversity and inclusion initiatives across the private sector are not resulting in significant change to advancement, retention and attrition issues for women. However, work done by the Women Lawyers' Association of New South Wales (WLANSW) highlights the fact that some firms have made better progress than others in increasing the numbers of women in senior and leadership positions. The WLANSW Data Comparison Project (DCP) provides a comparison of large Sydney law firms on a number of gender and diversity initiative criteria, starting in 2012. The DCP provided a starting point for this pilot project, allowing identification of the best performing firms on these gender and diversity criteria. The firms chosen to participate in the pilot project were either among the top firms in the DCP, or had implemented particularly innovative diversity initiatives. This methodology section begins with a discussion of the DCP before moving on to the qualitative methodology used in the pilot project.

### 4.1 WLANSW Data Comparison Project (DCP)

The DCP links a range of statistics on gender in large Sydney law firms with the diversity policies existing in those law firms, presenting the statistics and information on existing policies in one place, and in a format that allows easy comparison between firms. It was the initiative of Susan Price, a long-time member of the WLANSW, a former partner of a Sydney law firm practicing in employment and discrimination, and currently a director at PriceWaterhouseCoopers. Price developed the DCP in order to create a practical information tool for female lawyers choosing or changing law firms, providing members of the WLANSW and others with access to information on firms' gender statistics and policies. The DCP has been available publicly on the WLANSW website since it was first compiled. Drawing on publicly available data, it maps a number of equity indicators<sup>86</sup> which assist with identifying large law firms in Australia engaging in current best practices as measured by the numbers of women partners and equity partners in the firm, as well as the proportion of women as Senior Associates, the percentage of partners on flexible time and the implementation of gender policies and pay audits.

Price initially gathered data from a range of sources, including: the Australian Financial Review newspaper, which reports annually on data relating to a range of measures including the representation of women at partnership levels;<sup>87</sup> data produced by the LSNSW showing the gender profile of partners in NSW private firms, which allowed her to benchmark the performance of law firms in terms of whether they were above or below the female partner average across firms; the Equal Opportunity for Women in the Workforce Agency (EOWA's) citation of firms as an Employer of Choice for Women (EOCFW); and other information. The project was repeated in 2013 (with 2012 data) with the addition of data relating to firms' parental leave policies and the conditions, if any, attached to taking parental leave. This data was obtained directly from law firms by WLANSW.

In 2012 EOWA was replaced by a new agency, the Federal Workplace Gender Equality Agency (WGEA) established under the *Workplace Gender Equality Act 2012* (Cth)(the Act) to promote and improve gender equality in Australian workplaces. The Act requires workplaces to report on gender statistics. As part of the consultation process for the reporting requirements, the WLANSW asked the WGEA to require law firms to provide numbers and percentages of women equity and non-equity partners in order to promote greater transparency of partnership structures and gender composition.<sup>88</sup> The WGEA adopted this suggestion in part, and full reporting under the Act, through the use of a detailed questionnaire produced by the WGEA, and including gender representation in partnership and equity partnership, commenced in the 2013-14 reporting year.<sup>89</sup> Due to its focus on contributing to the development of the WGEA reporting requirements, the WLANSW did not produce its DCP dataset in 2014.

In its 2015 and 2016 iterations, the DCP dataset also included this critical information about the relative representation of women as *equity* partners as distinct from partners more generally within large Australian law firms. This data is compiled from the information contained in the reporting questionnaires lodged by individual law firms with the WGEA pursuant to their reporting requirements under the Act. The WGEA's 'Employers of

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86 It brings together publicly available data from a range of sources, including: the Australian Financial Review newspaper, which reports annually on data relating to a range of measures including the representation of women at partnership levels (E Tadors, 'Interactive: Law Partnership Survey' [2016] *Australian Financial Review* <<http://www.afr.com/business/legal/interactive--law-partnership-survey--jan-2017-20140714-12j69g>>); data produced by the Law Society of NSW showing the gender profile of partners in NSW private firms, which allowed her to benchmark the performance of law firms in terms of whether they were above or below the female partner average across firms; the Equal Opportunity for Women in the Workforce Agency (EOWA's) citation of firms as an Employer of Choice for Women (EOCFW), and other information, and most recently equity partners (gathered from WGEA).

87 Ibid.

88 WLANSW Submission, above n 3.

89 The Federal Workplace Gender Equality Agency is responsible for implementing the Act. (s. 10). Comprehensive information on the WGEA and a link to the Act can be found here <https://www.wgea.gov.au/>. The reporting requirements apply to all non-public sector employers of 100 or more employees in Australia. The indicative format for the 2016-2017 Workplace report questionnaire can be found at <https://www.wgea.gov.au/sites/default/files/indicative-format-wpp-2016-2017.pdf>.



of women salaried partners, who do not share in the profits and other advantages of equity partnership, highlights the importance of breaking down the figures within the stratified partnership ranks.

The dataset also shows that the number of women at Senior Associate level is over 50% at 90% of the firms, over 60% at 40% of the firms, and over 70% at 20% of the firms (with two firms having over 80% female Senior Associates). This raises the issue of the persistence of a second 'glass ceiling' between Senior Associate and partnership. The extraordinarily high percentages of women at Senior Associate level also suggest that Senior Associate may be, statistically, the career pinnacle for women; this may be distinctive to the Australian context.<sup>93</sup>

Fourth, the DCP is significant in its design purpose. Given the documented difficulties for women lawyers in openly challenging or questioning firms on their gender equity track record at the interview stage, having access to information on gender may well be of considerable practical benefit in women's career decision-making. It was also envisaged that public availability of the data would reveal how individual firms compared to their peers in the profession, potentially inspiring firms to adopt new strategies to improve their performance and standing on the table, and to consider strategies to progress their performance. It is the most comprehensive dataset compiled for purposes of tracking the types of data relevant to women's under representation at senior levels in large law firms in Australia.

## 4.2 The Pilot Project: Qualitative Research

The pilot project is a qualitative research investigation into a small sample of large Sydney law firms chosen by reference to the rankings in the DCP dataset.<sup>94</sup> Two firms with high percentages of female equity partners were chosen to provide an opportunity to gauge current best practices in culture and initiatives for promoting women. The other two firms were chosen on the basis that they had initiated innovative strategies designed to retain women lawyers. As this research is conducted in partnership with the WLANSW, firms were approached initially through letters to managing partners signed by both the researchers and the President of the WLANSW. Six firms were approached in all, four of which agreed to participate. Together, the four firms should provide a snapshot of current best practice and leading innovation at some of Australia's top law firms. Importantly, the purpose of the interviews was to gather and share information on best practices, rather than to add to the well-documented existing critiques of law firms.

Upon agreeing to participate, each firm was asked to share written diversity strategies, policies and programs. In addition, four lawyers at each of the four firms were interviewed: the managing partner and three female lawyers – an equity partner, Senior Associate and a lawyer, all of whom were chosen from a list of female lawyers provided by each firm.<sup>95</sup> The research team chose participants to be interviewed randomly from these lists, and information about which women were to be interviewed was not shared with the firms. The women were also given the opportunity to be interviewed outside of the firm.

Interviews were based on a semi-structured questionnaire tailored to the position of the participants. The interview questions were based on the themes and recommendations for best practice in the scholarly research and professional body reports discussed above, and also included open-ended questions allowing for identification of issues not addressed directly in the questions, as well as the interviewees' views on the most effective initiatives adopted. Where relevant, questions were introduced with reference to the scholarly literature with the intent of providing space for discussion about best practices, the exchange of information and brainstorming. The questionnaires are included in this report at Appendix A.

Managing partners were first asked a range of questions about the firm's diversity initiatives, such as whether there is a commitment to diversity at the top of the firm and whether, and how, the board or management committee is actively engaged. They were also asked whether the firm has recruiting targets, mentoring and affinity groups (at all levels), professional development for diversity, and other programs. Other questions included whether they reward good management for diversity, and whether they engage in self-assessment through periodic surveys, bottom-up evaluations of diversity initiatives, ongoing monitoring and exit interviews with departing lawyers. They were also asked about the criteria for partnership and its transparency and availability in writing. Open-ended questions elicited views on the most effective strategies and initiatives that have been implemented.

The interviews with women lawyers paralleled those conducted with managing partners on best practices, and also assessed the availability and their awareness of firm policies and initiatives, as well as their perception of the effectiveness of these. These interviews explored what the firm has communicated to women about the pathway to

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<sup>93</sup> Further investigation of the high percentage of women at Senior Associate level in Australia is needed. The National Association of Law Placement in the US states with respect to the 2015-2016 year that 'the overall representation of women associates has decreased over the majority of the last five years ... [i]n 2015 the percentage of women among associates sits at 44.68%, the lowest since 2006': National Association of Law Placement, 'NALP Diversity Infographic: Women' (2016) <[http://www.nalp.org/nalpdiversityinfographic\\_women](http://www.nalp.org/nalpdiversityinfographic_women)>.

<sup>94</sup> This research was conducted in accordance with the University of Wollongong Human Research Ethics Committee (ref: 2016/214).

<sup>95</sup> At one of the firms, there was only one female equity partner not currently on parental leave so she could not be randomly chosen.

becoming a partner, including the criteria for partnership, and their assessment of its transparency, effectiveness and equity. More generally, the interviews also looked at women lawyers' perceptions of firm culture and whether they have experienced conscious or unconscious bias or discrimination, or any other barriers that they believe have impacted on their advancement within the firm.

Interviewing lawyers across these levels of seniority allowed us to hear a range of perspectives in terms of policies and practices, insights and ideas for improvement and perceived barriers to future advancement, from management as well as from women who were differently situated within each firm's hierarchy.

The interviews were professionally transcribed and analysed for themes using NVIVO software. Comprehensive coding was undertaken for each interview, initially by a research associate, and then by the two researchers as well. On completion of the coding, a thematic analysis was conducted based on the themes identified. This allowed us to track the best practice issues raised in the context of the national and international literature.

The pilot research project reported on here builds on the information in the DCP and responds to calls internationally for research collaborations between academic researchers, professional bodies, and law firms. It also responds to requests from some large Australian law firms that the WLANSW provide guidance in taking diversity initiatives to the next level, including, for example, developing new partnership models.

## 5 DATA ANALYSIS: CURRENT BEST PRACTICE IN AUSTRALIA THE PILOT PROJECT

This section presents the analysis of the interview data, providing a glimpse into gender diversity and inclusion practices within four of the top national law firms as identified by the DCP. The interview data is presented in a structure that reflects the elements of best practice identified in the literature and discussed above, and the questions asked of firms and participants. In particular, it will examine:

- Commitment to diversity at the top of the firm
- Firm culture in diversity and inclusion
- Diversity and inclusion initiatives
- Mentoring and affinity groups
- Flexible work policies and practice
- Self-Assessment practices
- Criteria for partnership
- The partnership track
- Strategies that most support women's advancement to partnership

The commitment to diversity at the top of the firm and firm culture were seen by both participants in this study, and in the research more generally, as most important to achieving diversity and inclusion in law firms.

### 5.1 Commitment to Diversity at the Top of the Firm

Australian and international research suggests that a commitment to diversity at the top of the firm is critical to achieving diversity and inclusion objectives. All four managing partners expressed a strong commitment to diversity and inclusion, considering themselves as leaders in the diversity space, and reported endeavouring to tackle these issues within their firm in a range of ways. Commendably, all also acknowledge the ongoing challenges associated with realising greater diversity in their workplace, particularly at the senior and partnership levels, and expressed a commitment to ongoing reflection and a desire to do better. For example, one managing partner stated:

I see us as having a leadership position in gender diversity in any event. But I think there's a lot more that we can be doing to really ensure that we are best-of-market globally, in terms of ensuring that we put in place the right mechanisms to improve our gender diversity. Encourage women to get through to partnership, and to be leaders in leadership roles within the firm.<sup>96</sup>

The reference here to 'best of market globally' suggests that this managing partner has been convinced by the business case for diversity. The fundamental importance of a diverse and inclusive firm to business success was also acknowledged more broadly.<sup>97</sup> The research suggests that the business case for diversity is the most likely approach for garnering support, but that it does have its limitations.

Three of the firms have established an identified diversity committee which is made up of partners at both the business unit, or practice group, level and leaders of the management, or senior management level and Chaired by the Managing Partner. All committees report to the firm's executive and all initiatives are verified at the executive level. The firm without an identified diversity committee chooses to locate responsibility for diversity and inclusion with the executive committee itself. Two firms included diversity key performance indicators (KPIs) for managers, although for one firm it was only the managing partner who had such KPIs, so only one firm had diversity KPIs for practice heads, for example. More broadly, then, executive level commitment was apparent in a number of ways, for example, through adoption and implementation of a range of formal strategies within the firm, including leadership, mentoring and sponsorship programs, flexible work policies, affinity groups, practical support services and, in some instances, targets. (See below for more on firm strategies related to diversity and inclusion).

One firm also had specific targets, such as a target of 40% of new partners being women, and 25% of new equity partners being women and 25% of leadership roles being occupied by women.<sup>98</sup> Leadership roles were defined as

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96 Interview held in Sydney, comment 1.

97 Interview held in Sydney, comment 2.

98 Interview held in Sydney, comment 3.

senior management roles, including sitting on the board, being on the executive team, practice head leaders, and significant client relationship roles.

Firm engagement in regular self-assessment and evaluation practices was also occurring. One firm stood out with respect to the level and focus on monitoring and evaluations. The managing partner emphasised that, in response to past findings of unconscious bias, they monitor workflow allocation in order to attempt to ensure that work is allocated on a merit and capacity basis rather than on a gender basis. This firm also had a 'series of programs' to ensure pay equity, including reviewing the performance appraisal process, and what lawyers are being paid, for gender bias. This involves looking at pay rises and particularly at bonuses, and comparing them to performance ratings to ensure that what lawyers are being paid reflects their performance without gender bias intervening. This process was clearly described, and is worth a long quote as the international research would suggest that this is current best practice:

You look firstly at a wider basis, and say, well, what's the percentage of men that are getting bonuses, what are the percentage of women that are getting bonuses, and what are the percentage of men that are getting pay rises. How much are they, what's the average pay rise, what's the average female pay rise. Then you'd see what that overall picture is. That might say - you might see from that that there's a weighting towards men getting more bonuses.

Then we would look on a more granular level and say, well, where is that occurring? Is it occurring in particular practice groups? Then we work out which particular practice groups they are, and then we can actually have discussions with the practice heads and check that they've had unconscious bias training. Discuss with them what their actual rationale was for doing that, and then we see the types of reasons that come up. For example, the partners might say, well, we see that more men are being given bonuses because their hours are a lot higher.

Then we can have the discussion ...- well, why are their hours higher? Is it because the type of work that you've - ... has there been bias in terms of you giving them more work than you're giving your female associates? Or are you not taking into account the fact that the female associates may be doing the work more efficiently, and that's why they've got less hours. So you can have those discussions, and ensure you get - dig beneath, and ... - try to find out the actual reasons.<sup>99</sup>

The catalogue of best practices internationally recommends a commitment to diversity at the top of the firm, which is structurally implemented in recruiting targets, evaluation and reward systems (eg., KPIs for practice leaders or heads), as a first priority for successful achievement of gender diversity. The process discussed in this quote, of starting at the firm level and drilling down to specific discussions with particular practice groups, sends a clear message that the firm management is actively monitoring the distribution of work and the allocation of pay and bonuses in attempts to ensure that gender bias is not operating, and that work and rewards are distributed according to merit. Research suggests that this type of oversight is necessary, although perhaps not sufficient, for combatting gender bias in law firms. As discussed above, the objectivity of the billable hour as a measure of productivity for lawyers has been questioned. Further, the suggested inquiry in the quote into whether women are given fewer hours, and whether they are more efficient, is buttressed by the international research that suggests these may be two key reasons for women billing fewer hours. However, as noted above, the literature highlights other possible reasons: women acting on committees that cost time in billable hours; the quality (not just the quantity) of work received by or assigned to women; the greater commitment to *pro bono* work by women; and a misperception of how hard women work leading to devaluing the hours worked. Effective monitoring processes might also consider these impacts on billable hours.

Leadership from the top of the firms, and the prioritisation of recognition of diversity and inclusion initiatives was also reflected in the national and international awards received by these firms; three of the four firms were designated as 'Employers of Choice', a recognition program offered by the Workplace Gender Equality Agency (WGEA) which aims to encourage, recognise and promote active commitment to achieving gender equality in Australian workplaces.<sup>100</sup> Individually, some firm(s) have also been internationally awarded for their mentoring or other programs connected with diversity and equity<sup>101</sup> and are recognised members of 'Champions of Change', an industry based diversity program.<sup>102</sup> Two of the firms are signatories to the Law Society of New South Wales Charter for the Advancement of Women in the Legal Profession.

It should also be acknowledged that firms' commitment to openness and ongoing improvement in the area of

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99 Interview held in Sydney, comment 4.

100 The EOCGE commenced in 2001. The criteria for the citation cover "leadership, learning and development, gender remuneration gaps, flexible working and other initiatives to support family responsibilities, employee consultation, preventing sex-based harassment and discrimination and targets for improving gender equality outcomes." More information is available at: <<https://www.wgea.gov.au/employer-choice-gender-equality/what-wgea-ecogc-citation>>.

101 Interview held in Sydney, comment 5.

102 Interview held in Sydney, comment 6.

diversity and inclusion was evidenced by their willingness to participate in this pilot research study with the WLANSW and researchers.

## 5.2 Firm Culture

The culture of a firm is, of course, also critical to achieving diversity and inclusion goals and this was recognised by all managing partners. The need to build a fair and inclusive culture was seen as *the most important* strategy in achieving a truly diverse and inclusive workplace. As one managing partner commented, ‘if you don’t have the culture right you can have all of the programs and everything but they’re not going to work’.<sup>103</sup>

The NARS Report identifies the impacts of having few women in senior positions on firm culture and more specifically on women lawyers’ sense of connection and belonging within the workplace.<sup>104</sup> A lack of women in senior positions contributes to the sense of alienation that women feel without such opportunities and role models:

The relative lack of women in senior leadership positions is seen to contribute to a male-dominated culture in which it is difficult for women to progress. A number of women also indicated that the prevalence of men in senior positions presented cultural barriers to their own progression. Whether conscious or unconscious, the role of favouritism, personal relationships and alliances in the promotion process was seen to potentially favour male candidates in workplaces led by fellow men. Many participants view large law firms in particular as being overly competitive, with a male-dominated culture that is experienced as alienating by some women.<sup>105</sup>

There were two broad approaches to fostering firm cultures of diversity and inclusion: one involved an emphasis on structurally integrated programs while the other was said to be more ‘organic’ in nature. Most firms had introduced structural programs while one preferred an ‘organic culture’ that produces diversity outcomes rather than being structurally led,<sup>106</sup> meaning that ‘people will promote talent regardless of...the stereotypical prejudices that in many environments [inhibit] ... their growth and development because of those societal biases.’<sup>107</sup> Cultural leadership at that firm was said to be created through open leadership from the top, which was itself reflective of diversity and in which people were free to bring their whole selves to work:

I think leadership from the top including not only strong women partners but strong gay and lesbian partners, so that there’s strong leadership and people are clear, open and transparent about their lives and what’s important to them. ... and including partners with disabilities. So people speak openly and strongly about it. I think it creates as best as we can a sense of safety and inclusion. So I think that’s one and I think that’s probably the most important actually, senior leaders who are open.<sup>108</sup>

This approach, ensuring that the leadership of the firm is diverse, and openly acknowledges their values, signalling what the firm will recognise as important, responds to the types of concerns raised in the NARS Report about a lack of women, and of diversity more generally, in firm leadership, and the negative message that can be sent as a result.

A number of women lawyers spoke very positively of their firm’s culture and commitment to diversity and inclusion and felt that, compared to other firms they had worked at, their current firm excelled in the area of inclusion and diversity. One Senior Associate commented on her firm’s strong culture, which she described as emanating from the top, noting that their innovative diversity and inclusion initiatives ‘send a strong message that the firm cares about you [which] promotes retention [and] promotes attracting [new] talent...to the firm.’<sup>109</sup> A junior lawyer at another firm felt that ‘the environment was more conducive for women to be able to put their ideas forward, and feeling able to be heard without...a reaction from the males or the male partners;...it’s a different environment.’<sup>110</sup> Those at the top of a firm can send messages about firm culture, and the importance of the views of all of the firm’s members, by the way that they recognise and respond to the ideas of women, and by indicating that the firm cares about all of its members.

Male partners demonstrating their commitment and leadership were also felt to be crucial, by the women lawyers, in creating a positive and inclusive culture. A lawyer commented that the male partners in her firm helped to create an environment where women are able to be heard and were not relegated to the background. She also commented on the importance of male partners in establishing an inclusive culture:

I actually think a lot of it comes from the male partners rather than the females...I think they encourage an

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103 Interview held in Sydney, comment 7.

104 NARS Report, above n 1, 76.

105 Ibid.

106 Interview held in Sydney, comment 8.

107 Interview held in Sydney, comment 9.

108 Interview held in Sydney, comments 10-11.

109 Interview held in Sydney, comment 12.

110 Interview held in Sydney, comments 13-16.

environment where you don't feel like you need to...be in the background and they're very open about it. I know in my previous job the males would kind of try and put you down and there's not that culture here. You can go up to any partner, whether it's your partner or not, and you can talk to them and it's just different. I think that's what needs to be encouraged especially at that level because the typical male partner is generally quite dominant and has got that, I guess, belief, that what he says is right and no-one else is able to say anything different to what he's saying.<sup>111</sup>

The international literature supports the point that male partners at the top of the firm need to be part of actively setting the culture and tone of the firm, signalling what is acceptable and what is not, and being open to hearing from associates regarding how initiatives and careers are progressing.

Some women from both types of firms felt that the commitment from those at the top was not readily apparent, suggesting a disconnect between what the firm intends to communicate and how it is perceived. This lawyer expressed uncertainty about the level of priority given to the firm's commitment to diversity relative to other priorities and commented that, while her firm 'brands itself' as having one of the highest proportions of female partners, she didn't feel there was such a commitment::

I think in practice and the way I see it play out, certain behaviours that people just get away with, certain, generally older male partners who are used to a way of working who think harassment is acceptable and things like that, I wouldn't say there's necessarily a commitment from them...I think the focus is [to] make money first and they don't seem to be able to connect that. [There's] very short term thinking often; the old 'churn and burn'. So despite all studies which show increased women and increased other types of diversity in companies make you more profitable, it's sort of here's a guy who's going to work and work and work and I trust him because he's like me so I'm going to bring him under my wing.<sup>112</sup>

These comments suggest that the problems with firm culture in relation to diversity and inclusion identified in the national and international research, not surprisingly, have not disappeared, even at some firms that are making significant strides to address them. The shifts necessary in firm culture are likely to require ongoing efforts.

Consistent with these comments, the interviews indicate that while firm culture is reflective of the commitment shown by those at the top of the firm, in the context of large national corporate law firms, it was suggested that, to some extent, a 'blokey' culture comes with the territory.<sup>113</sup> It was also apparent from the interviews with women lawyers that the culture of the firm was often mediated by the particular work group in which you operated. As this culture varied, so did women's experiences of firm culture more broadly. One lawyer commented on a particularly 'blokey' and sexist culture that exists within her work area, identifying unconscious bias in work flow and entrenched patterns within the group that disadvantaged women.<sup>114</sup> This affirms calls in the research for processes and systems for monitoring unconscious bias, workflow and the quality of work distribution, such as the one discussed above.

While two firms had a notable focus on aspects of diversity other than gender, women lawyers at the other firms commented on the need for their firm to expand their focus on other diversity or intersectional experiences.<sup>115</sup> While gender diversity was acknowledged as very important, with more still needing to be done, it was noted that 'there's a whole different layer... we need to dig deeper...more could be done not just around gender diversity but LGBTI [too].'<sup>116</sup> To the extent that firms identified a focus on diversity other than gender, these included LGBTI and disability.<sup>117</sup>

### **5.3 Diversity and Inclusion Initiatives**

Firms have implemented a range of initiatives and strategies designed to improve diversity and inclusion, many of which reflect best practice as identified within the international literature. The identified strategies include: targeted initiatives at undergraduate student level, initiatives designed to attract and retain talent within firms, professional development, leadership training, flexible work and other diversity and inclusion policies. The following table provides an overview of the various initiatives introduced and offered by firms.

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111 Interview held in Sydney, comment 17.

112 Interview held in Sydney, comment 18.

113 Interview held in Sydney, comment 19.

114 Interview held in Sydney, comment 20.

115 Interview held in Sydney, comment 21.

116 Interview held in Sydney, comments 22-25.

117 Interview held in Sydney, comments 26-27.



**Table One**

| <b>DIVERSITY AND INCLUSION INITIATIVES</b>   | <b>FIRM 1</b>   | <b>FIRM 2</b>                           | <b>FIRM 3</b>               | <b>FIRM 4</b>                           |
|--|---|---|-----------------------------|---|
| Flexible Work  | Yes   | Yes                                     | Yes                         | Yes                                     |
| Parenting Leave  | Yes   | Yes                                     | Yes                         | Yes                                     |
| Maternity Leave  | Yes   | Yes                                     | Yes                         | Yes                                     |
| Leadership Programs  | No  | Yes (targeting SA on partnership track) | NI*                         | Yes (targeting SA on partnership track) |
| Mentoring (formal)   | Yes (for people on partnership track, and intermittently for lawyers) | NI*                                     | Yes                         | Yes                                     |
| Sponsorship Programs   | Yes (for people on partnership track)                                 | Yes (targeting mid-career)              | NI                          | No                                      |
| Coaching   | Yes   | NI                                      | NI                          | NI                                      |
| Affinity Groups (Women's Groups, Working Parents' Group, Voice coaching for women) | Yes   | No                                      | No                          | Yes                                     |
| Targeted administrative support  | No  | Yes (for partners and identified SAs)   | No                          | No                                      |
| Child Care/Nanny Services  | Yes (for partners and some SA)  | Yes                                     | No                          | No                                      |
| Targets (internal)   | No  | NI                                      | Yes                         | Yes                                     |
| Gender Pay Equity Analysis   | Yes   | Yes                                     | NI                          | Yes                                     |
| Additional Super payments on parenting leave                                       | NI  | Yes                                     | NI                          | NI                                      |
| Recruitment Strategies &/or Targets  | NoNI  | No                                      | No                          | No                                      |
| Diversity Committee  | No  | Yes                                     | Yes                         | Yes                                     |
| Indigenous Scholarships  | No  | Yes                                     | No                          | No                                      |
| Diversity and Inclusion Manager  | Yes   | Yes                                     | NI                          | Yes                                     |
| Unconscious bias training  | No  | NI                                      | Yes                         | Yes                                     |
| KPIs for diversity   | No  | NI                                      | Yes (only managing partner) | Yes (MP and executive members)          |

\*NI indicates that no information was available or provided in the interviews.

The best practice research suggests that most of these initiatives are necessary to success in changing firm culture, and to the attraction and retention of women to ensure a diverse firm, particularly at the partnership level. This chart suggests that even the leading firms on gender diversity initiatives have some gaps to fill, particularly around initiatives such as the provision of superannuation payments while on parental leave, KPIs on diversity goals for managers at all levels, and more broadly available leadership training.

#### **5.4 Mentoring and Affinity Groups**

All firms offered some form of mentoring opportunity for their lawyers and for those Senior Associates on a partnership track. These opportunities had varying levels of formality. For example, at one firm a mix of senior

and junior associates from across a range of practice areas would meet informally over coffee, say, once a month, to discuss work and any issues of importance to them.<sup>118</sup> This involves senior women mentoring junior women and was felt by some to be useful and very successful. However, there was some scepticism about the effectiveness of these types of groups, and related events, across the firms participating, in achieving real change in firms:

But ... - I don't know what it achieves. I also know there's a reasonable level of resentment about it from the young men in the firm. I hear a lot that young men don't get why. They see women as equal to them and they don't get why there has to be other things for women. Then I see - my view is, because men just do it anyway. They do it anyway. They have these - their own networks and there's - through unconscious bias men like men.<sup>119</sup>

In addition, some lawyers are assigned a Senior Associate to act as a formal mentor, which has been found to be helpful.<sup>120</sup>

Some women highlighted the importance to them of choosing a mentor, or indicating their preference for a mentor within or outside their practice group. At one firm lawyers nominate three people who they would like as mentors and one is assigned.<sup>121</sup>

Then also, I personally have a female mentor who is my - who is a Senior Associate in my team. That was arranged by the partner; every single junior lawyer has a mentor that they can go to, and that's actually helped too...At the moment, it's within the team but obviously if you need a mentor outside of the team, that's available to you...I think personally, for me, I prefer that [a mentor within the practice group]. Only because they understand maybe the day to day issues that I face. But having said that, in [my other place of employment] I had a mentor that wasn't in my team and that gave a little bit more clarity and you could be a little bit more open because you weren't centralised in your own team.<sup>122</sup>

The ability to indicate a preference for particular people as mentors, or for a mentor within or outside the practice group may represent best practice.

Some felt that opportunities for mentoring for women who were Senior Associates were less; unless you were identified as being on the partnership track, there was little for you:

I get a lot out of it [diversity group meetings] in terms of getting to know what's going on and networking and meeting with junior lawyers, but the mentoring is me mentoring them. There's - unless you're on the partnership track, there's not a lot for people, kind of senior lawyers, Senior Associates.<sup>123</sup>

While mentoring for mid-level and Senior Associates was identified as lacking at some firms, mentoring of new partners was even rarer. However, some partners and managing partners identified the need for mentoring programs for new partners:

certainly for our senior leaders we've had peer mentoring which is really fantastic - that was part of a leadership program we were all doing - but that partner mentoring will be introduced across for all partners.<sup>124</sup>

This is a reference to bringing in mentoring for all partners.

Two firms had affinity groups that brought together particular diversity groups or groups with a shared interest or concern. Such groups included working parents and carers, voice coaching for women, women's networking groups, a women's diversity sub-committee and an LGBTI diversity sub-committee. One firm has a peer group program for working parents that involves partnering with lawyers from another firm, and which is said to focus on that 'pivotal' time in a lawyer's career where they have, or are about to have, children:

That program obviously focuses in on senior women at that pivotal stage in their career. They have young families. They're either about to go away on parental leave or they've come back or they've got young families.

We really focus in on areas where they can help manage that work demands and home demands and how to have those tricky conversations with your managers, with your peers, with the people that are reporting to you. Again the focus is on building that network of people in that same boat as you.

Yes, and I think that's the key to this program. So it's structured over three months. Two workshops which last about three hours each, and then individual coaching, one-on-one coaching, with the facilitator. So it has

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118 Interview held in Sydney, comments 28-29.

119 Interview held in Sydney, comment 30.

120 Interview held in Sydney, comments 31-32; Interview held in Sydney, comments 33-34; Interview held in Sydney, comments 35-36.

121 Interview held in Sydney, comment 37.

122 Interview held in Sydney, comment 38.

123 Interview held in Sydney, comment 39.

124 Interview held in Sydney, comment 40.

that mid-level longevity to it. It gives people time to go away, reflect, implement, try different techniques and areas they're focussed in on and obviously they get the homework as well.<sup>125</sup>

One issue suggested by the international literature and the interviews was whether there is a difference between mentoring groups and programs formally established within firms, and informal 'sponsorship' by a powerful partner who advocates for a 'protégé' associate. One participant specifically discussed how the mentoring program was not about sponsorship for partnership, but more general:

I think the mentoring program is... probably less about making your way to partnership. It's not meant to be about that, it's meant to be about you just having a general chat with somebody about - it might be about your progression, it might be about a specific issue that you're having with a client that you might want some advice on how to deal with something. It's not specifically about your progression as such.<sup>126</sup>

A number of women partners spoke of how important the more targeted sponsorship was to their career. Identification of sponsorship as crucial to attaining partnership in many instances provided the initial justification for mentoring programs. However, mentoring programs do not necessarily result in the type of sponsorship necessary to attain partnership. On the other hand, mentoring programs may provide a mechanism for developing sponsorship relationships than would not otherwise exist.

Two firms have leadership training programs targeting Senior Associates who are identified as on partnership track. These programs provide upskilling in leadership skills,<sup>127</sup> including working with colleagues, team management and managing staff more generally.

One firm has set up a sponsorship program for Senior Associates who have been identified as having potential for partnership. This program followed participation in a leadership pathways program:

So our response has been to pilot what we've called a sponsorship program, where we would have our women who've completed what we call our leadership pathways program, so our pre-entry - our final senior formalised program, would enter into a sponsorship relationship with someone within the partnership that would advocate for them and that would challenge them and their supervising partner, and to make sure that they are staying relevant - that they've got a voice at the table, even though they may not be at the table and that they're able to know that someone's looking out for them.<sup>128</sup>

This suggests a consciously tiered series of programs that begins with mentoring and builds to a leadership program, and then a sponsorship program. It suggests recognition that mentoring alone is unlikely to be sufficient.

Sometimes information about building a sponsorship relationship is communicated informally. One women partner said:

I was just lucky that when one of those women left they said you kind of need to pick which train you want to get on and stick on that one to get the workflow to get on the good deals. So they said so if you can pick this guy's train because he's on the partnership track. So he is, I call him my mentor. Like it wasn't anything that was assigned by the firm but he is really great and we have a really good relationship but there's no formal mentoring programs or anything like that.<sup>129</sup>

This quote again highlights the importance of sponsorship as opposed to, or in addition to, more generalised mentoring programs.

## 5.5 Flexible Work, Part-time and Job Sharing Policies

All firms had flexible work policies and indicated that they generally encouraged lawyers to adopt flexible work practices. It was seen as an important retention strategy particularly for senior staff and key talent within a firm. Examples of flexible work might involve formal arrangements whereby a lawyer may return from parenting leave to work three days per week; or to work three days per week in the office and their remaining hours remotely from home. There were also informal arrangements involving a lawyer choosing to work remotely from home on a given day when they are not required in the office for client or other commitments. The ability to work remotely varied depending on the lawyer's seniority and the particular needs and culture of the work unit.<sup>130</sup> It was noted that people across all levels of seniority were working flexibly.

There were very positive experiences of working flexibly, and of creative and dedicated efforts to make it work

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125 Interview held in Sydney, comment 41.

126 Interview held in Sydney, comment 42.

127 Interview held in Sydney, comment 43.

128 Interview held in Sydney, comment 44.

129 Interview held in Sydney, comment 45.

130 Interview held in Sydney, comment 46.

for practice groups. Some participants worked in practice groups where a high proportion of the team worked flexibly, and discussed how that was managed and negotiated. A sticking point in working flexibly is often around maintaining client contact, which is necessary in order to stay on a 'partnership track' and to maintain interesting, as opposed to routinised, 'backroom' work. The challenge is to facilitate maintaining client contact for those working flexibly (to allow them to remain 'client facing') and to continue to do so efficiently and at no extra cost to the clients. The international research suggests that these challenges are often cited to justify taking those working flexibly off of client contact. However, at least two participants worked in practice groups with a high proportion of the team working flexibly and maintaining client contact successfully.

One woman had a positive experience of working flexibly, in a group engaged in an area of litigation ('traditionally very male dominated') where half of the partners were currently working flexibly. She noted that her firm emphasised a long term view in which retaining the best lawyers was critical:

It's pretty clear that at some point I would have children and that certainly wasn't an impediment at all and it was - you're the best person and we take a long-term view of these things - which is we want you to be here in 10 and 20 years' time. ...Taking that long-term view of this as an investment in the people that we want to be here in the future.<sup>131</sup>

Interestingly, she noted that the practice group was now female dominated, because when they were recruiting 'the better candidates were female', and she wondered whether they were attracted to the practice group because they could see that it would be possible to work flexibly in it:

Some of the graduates look at it and go - actually, this works really well. Maybe it's something I might consider because if I am planning a career, at least I know at this firm, this particular practice group manages it.<sup>132</sup>

It's important to recognise the flow-on benefits to the firm of providing flexible work options that continue to engage, stimulate and reward all lawyers. These benefits can include attracting and retaining the best candidates for the job.

Another participant reflected specifically on the well-trodden path of giving those working flexibly less interesting work, noting that her practice group had rejected this path:

We haven't solved this issue just by saying we will give you a less demanding job because our people are intelligent people who want to keep developing in all their ways while still having as far as possible the bargain of flexibility.<sup>133</sup>

This is a forthright acknowledgment of the level of intelligence and commitment necessary to perform well in these positions, and the need to retain highly trained lawyers by keeping them engaged with interesting work. This participant also discussed grappling with the challenges of sharing work between people efficiently:

So if our solution involves having more people work together which we think means [we] retain skilled people, we need to have people able to brief and debrief each other efficiently so that the team can seamlessly provide the work and not at greater cost. Now there is a lot of challenge in all of that. So how have we thought to deal with this? ... To better pair people so that people can more seamlessly be sort of in a job share [?]<sup>134</sup>

These are the key questions, how to retain trained lawyers in efficient manners, while

allowing them to work flexibly. The team adopted specific responses to these challenges which required rethinking how they work more generally:

We don't silo people in the teams. We want people to keep getting broad experience across a group. We do a wide range of [type of work] across multiple industries. We want people to be broader because it's stimulating for them. They learn more in particular areas of their work and that also is a challenge, because if you had a particular siloed team it would be very clear what you're doing and you could manage these in a more predictable way.<sup>135</sup>

It is about thinking of the practice group as a team, or a unit, really working together, not against or in competition with each other. It requires building a team 'of people, men and women, who wanted to support each other. To have families and have lives and still do great work.'<sup>136</sup> It required taking a step back from the traditional approach to work and thinking seriously about what it would look like to share work in ways that allowed people to both

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131 Interview held in Sydney, comment 47.

132 Interview held in Sydney, comment 48.

133 Interview held in Sydney, comment 49.

134 Interview held in Sydney, comment 50.

135 Interview held in Sydney, comment 51.

136 Interview held in Sydney, comment 52.

work and live:

That means also seeing workers share work, not single work and once you see it that way you don't need to hold work. You're all supporting each other to grow, to do the best work and to live as you want to live. So perhaps more than parental leave for me the whole approach to our relationships and how ... we were developing practice, was about making living and working work. I find balance a funny word because I don't think anyone ever feels balanced ... You feel more or less degrees of chaos or a bit more comfortable, never controlled<sup>137</sup>

Finally, she noted that the partners in the group had accepted that finding ways for everyone to do good work and remain stimulated and challenged while working flexibly might mean that they earned less:

So apart from using technology to better to communicate with each other, which we are looking at all the time, we're looking at a question of setting up a structure where we resource more than we predict we need. Now that would be a big jump, we're going into planning for that so that at times of peak work our people are under less pressure. Now that we - but not charge clients for it necessarily that will mean anybody hearing that ... that will mean we will be less profitable.<sup>138</sup>

The reference here to a 'big jump' suggests that firms and practice groups need to be open to rethinking how they work, and their priorities, if they are serious about embracing flexible work options and making them successful. Here success also involved communicating the style of work and the work environment to the clients. But she noted that many of their clients were also grappling with the same issues within their working environments and were very receptive to the approach the team was taking:

We try to do that and also for the clients to know we've got a team of this size. So they're not surprised when we have to move people in and out. Many of them also are doing these things. So many when they know it are very receptive to it, yes.<sup>139</sup>

The bottom line?

[W]e all wanted to do great work and have meaningful lives and that to me is what has been definitive and why I'm here after 22 years and still inspired by it.<sup>140</sup>

This is the most in-depth discussion of flexible work and work/life balance that emerged from this pilot project. It does not mean that it is the only instance of successful rethinking of practice groups' practices at the four firms involved in the project, as we only interviewed a small sample of lawyers at each. The available research nationally and internationally, discussed above, suggests that it may be indicative of current best practice at large law firms, and therefore may provide an example for other firms, and practice groups, to consider.

As this example suggests, working flexibly was interpreted as not just working part-time, but also working outside of the firm, and was linked by some participants with work/life balance. One interviewee discussed a panel of partners talking about work/life balance:

They're often a bit disheartening in a way, or very realistic, because the reality is there is no work/life balance to get to those kinds of positions. You - they have full-time nannies or they - lots of them go home, there's - I know there's one partner, for example, who spoke at one of them who goes home at four or five each day, spends two or three hours with her kids, then logs on and works at home till midnight or whatever. So having that flexibility is great, but how attractive is that really, doing that every day, day in, day out?<sup>141</sup>

Another woman commented on the relationship between an unsustainable work/life balance and the business model of large firms, echoing the comments above:

No, thank you. It's a tough, tough life. Ultimately, I think the structure of law needs to change and we have to not expect that we're going to work 10, 12, 14, 16 hours a day. Really that's about making money. Because really it's two people. It's two - if you're working 16 hours a day, that's two people's job. ... If it's ever really going to change for both men and women so that you have a real work/life balance, then it's that, I think. You see, I think women leave and men ultimately get depressed or have drug and alcohol issues. I mean, that's what the research shows. They keep looking at law and saying, why is there such - why do women leave and why do men at the end of their careers are they depressed and alcoholic? Because it's unsustainable. It's not a good life. If we really want to change that, that's what we have to change, but you're not going to be able to take home \$2 million a year. But really, you can't live on \$1 million or \$800,000 or like - you know?<sup>142</sup>

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137 Interview held in Sydney, comment 53.

138 Interview held in Sydney, comment 54.

139 Interview held in Sydney, comment 55.

140 Interview held in Sydney, comment 56.

141 Interview held in Sydney, comment 57.

142 Interview held in Sydney, comment 58.

Interestingly, this comment about how much is earned echoes the discussion above of successfully integrating flexible work opportunities for a practice group.

The importance of flexible work policies was clearly identified, and, as discussed, there were a variety of positive experiences. However, for some, it was apparent that the reality of making it work on a day to day basis and at a particular career level could be challenging:

I know in my team there is a view that, while there's flexibility, it's not as flexible as it could be. So we've just actually been told unless you need to work at home for a particular reason, try and be in the office. I think there is definitely a move to change that. So one of the partners is an innovation partner ... and he's trying to change that work view. Because at the end of the day, if you do your work, why does it matter if you're sitting in your office or somewhere else?<sup>143</sup>

[I]f I compare this firm to potentially other firms that friends work at, I think it's not as flexible as I would like. For example, at [previous place of employment, not a law firm] where flexible working was embraced and it was almost like a given that once a week you could work from home. Here, obviously, after six o'clock, seven o'clock, you can go home and work from home. But I think that's a little bit different from working flexibly.<sup>144</sup>

Commenting on the firm's use of flexible work practices, a managing partner noted the challenges experienced by some of their partners when the theory and practice of flexible work present themselves, suggesting that 'the biggest issue tends to emerge around people, when it has an impact on them personally, so partners - when staff may have family commitments or wish to start families that tends to test it, because suddenly it's like, oh, the concept's great, but now the practice...'<sup>145</sup>

While women were clear that flexible work policies were critical, there was still concern that working flexibly could be damaging to your career and, in particular, to your prospects of making partner.

I feel a little bit is gendered and I think having children obviously impacts that. You know, you're taking a year, two years out of the workforce and then you're suddenly two years behind your male equivalent. So if you started as a grad together, you'll be two years behind, which will put you behind on that list.<sup>146</sup>

This firm has very good part time policies and I have taken advantage of them, it does hinder your career progression. So, for example, I only have one child, who was born in 20xx, but for about seven years I worked part time and that was initially three days and then four days and then four and a half days. The firm was fantastic around that in terms of allowing me to do that and it worked fine, but it just meant that I haven't - I think it has - it's one of the things that's got in the way of my progression.<sup>147</sup>

There is a need for firms to consciously build in strategies that ensure that women who have taken time out to have children and return to flexibly work, are reintegrated in a way that is as supportive and protective as possible to minimise damage to their careers.<sup>148</sup> For example, it was suggested that keeping lawyers involved with clients while on parenting leave and placing them back into client work on their return could be helpful strategies.<sup>149</sup>

And, even among women who had positive experiences taking parental leave and working part time, the issue of presenteeism was still identified. One woman who worked in what she identified as a very supportive team, was made partner and went on parental leave 18 months later, returned part time working flexibly, and was made an equity partner 12 months later. She felt the need to be present in the firm after parental leave to justify her productivity:

there was a period in time, probably after I came back from maternity leave, where you felt you physically had to demonstrate your presence in order to then justify what you're doing is productive. Does that make sense?<sup>150</sup>

A number of other participants commented on the necessity of being present at the workplace, not in order to get the work done, but in order to be seen to be there, and to be committed.

Margaret Thornton's recent qualitative research in relation to work/life balance for men and women in large corporate law firms in Australia also finds continuing stigma attached to flexible work practices and the stereotyping of women as uncommitted and incompetent, as well as the re-entrenchment of the masculinist model of the ideal

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143 Interview held in Sydney, comment 59.

144 Interview held in Sydney, comment 60.

145 Interview held in Sydney, comment 61.

146 Interview held in Sydney, comment 62.

147 Interview held in Sydney, comment 63.

148 Interview held in Sydney, comment 64.

149 Interview held in Sydney, comment 65.

150 Interview held in Sydney, comment 66.

lawyer.<sup>151</sup>

There was also some comment on the quality of work after a period of parental leave, or while working flexibly, that was identified in the literature review above as being given on ‘pink files’:

From my work perspective I know that I’m trying to build up this practice, but in terms of the work that I’ve been given, and my partners are aware of this because I had a meeting probably x months ago now so it went on, I let it go for a good xx ..months thinking okay it’s because I’m building this practice, it’s because I’m getting back into this. But I had a meeting with our ... managing partner ... , and I said to him if this doesn’t change, if I don’t start getting some good quality work coming my way I will not be able to stay here because I can’t go on like this. ... - I have got 2x years’ experience doing this work and I am being given work ... - something that I would be giving a junior saying can you review this report for me.<sup>152</sup>

It’s important to read these experiences in the light of the discussion above about taking a team approach to flexible work, across a practice area. It may be that individualising the experience of flexible work can make it a negative experience while using an open, transparent, team approach, with clear communication to clients, will produce more successful outcomes.

It is important to emphasise that there are positive experiences of working flexibly. Some practice groups within some firms seem to be making flexible work, for fairly high proportions of their lawyers, work well, with considerable positive benefits. These discussions suggest that rethinking working and living within a practice group, breaking down ‘silos’, and ensuring broader areas of expertise can be stimulating, rewarding, and even inspiring, and may result in attracting the best talent. It may also be in the best interests of the firm, in terms of the ability to retain the best people. Finally, these examples suggest that this type of approach can work in both regulatory and litigation areas, and that clients may be likely to be receptive rather than resistant to practice groups working effectively and flexibly.

## 5.6 Self Assessment

The best practices on diversity and inclusion identified in the national and international research included a focus on self-assessment, such as through periodic surveys, interviews with former and departing lawyers, bottom up evaluations and ongoing monitoring of practice and other managers. Questions on self-assessment were therefore included in the interviews, and the answers are reported in the table below.

**Table Two**

| <b>SELF ASSESSMENT PRACTICES</b>        | <b>FIRM 1</b> | <b>FIRM 2</b>                      | <b>FIRM 3</b> | <b>FIRM 4</b> |
|---|---------------|------------------------------------|---------------|---------------|
| Staff surveys                           | Yes           | Yes (values and engagement survey) | Yes           | Yes           |
| Exit interviews                         | Yes           | Yes                                | Yes           | Yes           |
| 360 degree evaluations/ feedback/survey | Yes           |                                    | Yes           | Yes           |
| Bottom Up Evaluations                   | Yes           | NI*                                | NI*           | Yes           |
| Diversity audits                        | Yes           | NI*                                | NI*           | NI*           |
| Focus Groups                            | Yes           | NI*                                | NI*           | NI*           |

\*NI indicates that no information was available or provided in the interviews.

While all of the firms had exit interviews, the extent to which these interviews asked questions about diversity and inclusion initiatives or issues was not as clear, and it was not clear whether, or how, the information gathered from these interviews was used, for example whether it was provided, in some amalgamated and de-identified form, to management and diversity committees. Similarly, all firms had staff surveys, but the extent to which diversity issues were surveyed, and the use to which the surveys were put, was not clear from the information provided in the interviews.

<sup>151</sup> Interview held in Sydney, comment 67.

<sup>152</sup> Interview held in Sydney, comment 68.

## 5.7 Criteria for Partnership

Managing partners were asked about the criteria their firm applies to partnership appointments. Senior Associates and lawyers were also asked about their knowledge of the criteria and the level of transparency of the criteria within their firm.

Generally speaking, partners identified revenue generation through billable hours and client attraction, technical ability, and client development and people management, culminating in the presentation of a sound business case, as key criteria for partnership.<sup>153</sup> The relative weight given to each of these, however, was less clear. All of the managing partners interviewed contended that, while generating revenue, or ‘financials’, were crucial, this was not the only necessary factor. One stated that while there is a ‘minimum financial criteria that needs to be met’ it is flexibly applied depending on the circumstances of the person, ‘[i]t will be one thing that needs to be at a certain level along with a bunch of other things’, adding that ‘hopefully it means that people with different strengths are able to progress into the partnership’.<sup>154</sup>

It was also emphasised that it is not ‘the best biller that always gets promoted.’<sup>155</sup> It was indicated that ability to work with others, lead a team and manage a team, were also crucial. Similarly, it was commented that while revenue is not the only criteria, a sound financial business case was essential, and so ‘...rather than [revenue] being valued more, it’s that you must have [at a minimum]...a sound business case.’<sup>156</sup>

Contributions to clients as well as the potential for firm growth were identified as central to establishing a sound business case. Here it was said that the business case was not only about revenue but also about ‘the impact on the firm and the capacity for the firm to grow’ as a result of the appointment.<sup>157</sup> The ability to grow the practice area was highlighted in the context of a discussion of all of the criteria by another of the managing partners:

Three areas of contribution [are necessary]: which is financial, which is both the revenue to the firm you’re responsible for but also what you may be anticipating bringing in. The second one is your *practice development capability and trajectory and profile*. The third is the way in which you interact with teams, foster teams...So it is about - it is a holistic exercise. But I think it’d be fair to - I think people tend to think it’s all about the business. No, it’s not. It is critical to have an *underlying and sustainable practice that can grow financially*, but what is more important is how you can then grow the people around you and grow the firm more broadly.<sup>158</sup>

Here growth of the candidate’s practice area is emphasised alongside ‘growing’ the people in the practice, or leading the development of other lawyers. As reflected in the discussion of national and international research above, women may tend to excel in people management, team leadership and other areas crucial for firm success, but are sometimes overlooked in partnership assessments.

Leadership roles within the firm were also particularly noted: are you a ‘representative of the firm...you need to be generous, you need to be accessible. You need to be able to practice law – the practicing law bit is probably the easy bit. Yes, participation in those [mentoring] programs certainly is part...we ask them to outline what role they’ve played as far as bringing juniors through and delegating and then mentoring.’<sup>159</sup>

Despite managing partners’ assertions as to the balance and flexible approach taken to weighing criteria, particularly the quantitative criteria, Senior Associates and lawyers were more likely to consider that financial performance was the most important factor against which they would be judged.<sup>160</sup> For example, the lawyers variously commented that ‘the focus is definitely on billable hours and clients...’,<sup>161</sup> and that, while she wasn’t really sure of the criteria, she has ‘...always erred on [the side that] your fees are your main priority’.<sup>162</sup> An equity partner commented that throughout her career fee generating activities have always been given about a 90% weighting. She believes the percentages at her current firm are ‘slightly different’ and seem to be applied more flexibly.<sup>163</sup> These comments suggest a possible disconnect between what managing partners and senior management portray

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153 Interview held in Sydney, comment 69.

154 Interview held in Sydney, comment 70.

155 Interview held in Sydney, comment 71.

156 Interview held in Sydney, comment 72.

157 Interview held in Sydney, comments 73-75.

158 Interview held in Sydney, comment 76.

159 Interview held in Sydney, comment 77.

160 Interview held in Sydney, comments 78-81; Interview held in Sydney, comments 82-83; Interview held in Sydney, comments 84-85; Interview held in Sydney, comment 86: ‘I think there’s kind of different - so I think formally, or from a structured point of view, I think my sense is that the firm presents it as of equal weight with all the other criteria - for instance the softer skills around management of people, and deep client relationships. The actual - your hard targets and your billings are seen, I don’t think is given any more prominence than those things. Yeah, but I think at an informal level I think they would be given quite a lot of - particularly I think if you’re going for partnership...’

161 Interview held in Sydney, comments 87-88.

162 Interview held in Sydney, comments 89-90.

163 Interview held in Sydney, comment 91.



as valuable and what is perceived as valued by lawyers within the firm.

Managing partners acknowledged that the balancing of criteria is a 'subjective process'<sup>164</sup> and that there is often a tension between the criteria:

It is important to value all of them, I think, but people - there's no interest like self-interest, so people will tend to see it through the lens of what they're best at. It's all about the client. But sometimes - you'll have partners in our firm who make it all about the client, but then put unreasonable expectations on their colleagues. So that's not good enough. Then they're not - because it's all about the client, they forget that they're not doing something over here.<sup>165</sup>

Privileging billable hours or quantitative measures of success for partnership can impact on women's progress to partnership. As one female participant commented, '...men have an obvious advantage in progressing in a law firm through the number of hours you do. If you have time out to have children ... then you don't do that number of hours and I think that works against you progressing in the firm, progressing to partnership.'<sup>166</sup> The range of issues for many women with the prioritisation of billable hours was discussed above in the literature review.

## 5.8 The Partnership Track

Partnership aspiration and women's experience of getting on the partnership track was also the subject of investigation. Participants were asked whether they were interested in becoming partners in their current firms or, if they were already a partner, about their experiences of their pathway to partnership. Some of those who were already partners spoke enthusiastically, particularly about the support they received within their practice groups, from both women and men. They also spoke enthusiastically about sponsorship, in the sense of ensuring that they received high quality work and as providing advocacy for partnership. In more than one case sponsorship, and advocacy, provided by the practice group leader (one woman and one man) was identified as instrumental in achieving partnership.

Responses from those who were not yet partners were varied with some expressing definite partnership aspirations while others were more ambivalent. Women from these two groups, however, all expressed uncertainty as to whether partnership was a 'realistic goal'<sup>167</sup> or whether it was simply 'out of reach' for them.<sup>168</sup> For these women, partnership was seen as being incompatible with having a family, balancing family/work life and was thought to require considerable sacrifice.<sup>169</sup> The appeal of working as a lawyer in-house in a corporation, which is said to have 'much better hours and more flexibility,' was seen by some as an attractive alternative to the partnership pathway.<sup>170</sup> Some noted that attaining partnership was 'a lot harder' for women due to unconscious bias.<sup>171</sup> The ongoing challenges faced by women in balancing work and family responsibilities were also acknowledged by female partners, with one commenting that '...the questions of when to have a family and how that fitted with your timing and career progression were difficult ... and I continue to find that young women find these issues difficult'.<sup>172</sup>

Both Senior Associates and lawyers expressed a lack of clarity around the criteria and processes for attaining partnership. Annual performance appraisals were seen as opportunities for guidance on what they needed to do to make partner. However, a number of women described a disconnection between their annual or regular appraisal and articulating what this meant for the road to partnership. While the annual appraisal appeared to revolve around what that person needed to know and be able to do in relation to their particular role as a first, second, third year lawyer and so forth, two lawyers considered that there are unspoken or unseen criteria that do not get reflected in these processes. This uncertainty seemed particularly acute in the mid-career period where Senior Associates may be looking to advance to partner. One Senior Associate commented that she had observed this progression from lawyer to Senior Associate was 'quite seamless' in that working hard and meeting your descriptors would generally guarantee you moving into Senior Associate position.<sup>173</sup> However, moving from Senior Associate to partner was particularly difficult and was where women often got 'stuck'<sup>174</sup> or felt they were being 'dangl[ed] a carrot' that would never eventuate.<sup>175</sup>

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164 Interview held in Sydney, comment 92.

165 Interview held in Sydney, comment 93.

166 Interview held in Sydney, comments 94-95.

167 Interview held in Sydney, comment 96.

168 Interview held in Sydney, comments 97-99.

169 Sacrifice mentioned also by Interview held in Sydney, comment 100; see also Interview held in Sydney, comment 101.

170 Interview held in Sydney, comment 102.

171 Interview held in Sydney, comment 103.

172 Interview held in Sydney, comment 104.

173 Interview held in Sydney, comment 105.

174 Interview held in Sydney, comment 106.

175 Interview held in Sydney, comments 107-108. This comment was made in reference to this participant's experience of partnership in her previous law firm.

In addition to a perceived lack of clarity around the weighing of criteria for partnership (as discussed above) the process by which one is identified as being on the 'partnership track' was also seen as 'opaque'<sup>176</sup>, 'subjective'<sup>177</sup>, 'unclear', 'informal'<sup>178</sup> and 'idiosyncratic'.<sup>179</sup> One Senior Associate expressed the view that, while clearly one has to be a good lawyer, whether one was considered suitable for partnership was dependent on 'whether they like you and they want you',<sup>180</sup> while another commented that she found the process of trying to work out what she needed to do to get on the partnership track difficult because 'it isn't clear' and 'I don't feel like I have a lot of support to do it.' She found that 'at a personal level [seeing] other people getting that support and wonder[ing] why you don't have it yourself. It's a bit undermining in terms of your sense of confidence.'<sup>181</sup> One interviewee, unsure where she was in relation to partnership, perhaps as a result of moving practice areas, decided that she needed to put a business case together and approach the head of her group:

I think what I need to do is ... put together a business plan and speak to the [head] of my group and say, this is my proposal and will the partners consider that and what would I need to do for you to support me on the partnership track? Or is that not - have you decided that that's not something you're going offer to me, or is not available to me? I'm kind of in the process of doing that now. But it's - I've found it hard in terms of, it isn't clear. I don't feel like I have a lot of support to do it<sup>182</sup>

However, she also noted that others who had not been selected for partnership path programs who had attempted this approach were not successful.

The impact of taking time out of the workforce to have children was identified as another reason why women can feel stuck and ultimately 'give up' on partnership aspirations.<sup>183</sup> As one Senior Associate commented, men have an obvious advantage because 'taking time out means that you do less hours...but it's also the experience you get and how good you get and how competent you get [that is affected]. It is also how much time you have to network and all those other kinds of things.'<sup>184</sup> Women being 'stuck' at Senior Associate level for long periods of time, where they felt a lack of clarity around partnership prospects, appears to be a time at which firms may be vulnerable to losing their senior women lawyers.<sup>185</sup> This highlights the importance of actively managing expectations and of the need for ongoing development at the mid-career point, as discussed above. This was acknowledged by some at the top of firms:

So it was the period of time when they finished leadership pathways. That's great. We all finish, and no one was helping manage expectations, continue to challenge, continue to develop, make sure that they knew that they were still on the radar. So people - and women, often, because I think where nothing's said, they - we - go, okay, nothing's been said. Well, I'll look after myself and I'll opt out and I'll go find something else. That's what was happening.<sup>186</sup>

The 'problem' of women not being confident enough to put themselves forward for senior roles was also identified. Women often wait to be identified as having talent rather than initiating conversations about the partnership track, whereas 'men put themselves forward...Men say 'I want to be made a partner [but] I feel like, "why aren't I good enough to be made a partner?"'<sup>187</sup> While growing the confidence of women to put themselves forward is important, a key concern is the fact that women may not be adequately positioned in the firm to enable them to demonstrate their partnership readiness. It was apparent from a number of the interviews that work allocation and work flow practices (and culture) within some firms operated in ways that women felt were disadvantageous to them. The problem of work allocation was seen as twofold: first, that gaining good work opportunities, and opportunities to meet business development aspects of the role, was dependent on gaining the support of a partner or someone who was on the partner track, which was felt to be quite ad hoc and subjective.<sup>188</sup> Similarly, whether you had an

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176 Interview held in Sydney, comments 108-119.

177 Interview held in Sydney, comments 119A – 119C.

178 Interview held in Sydney, comment 120.

179 Interview held in Sydney, comment 121.

180 Interview held in Sydney, comment 122.

181 Interview held in Sydney, comment 124. Also note Interview held in Sydney, comment 125 and Interview held in Sydney, comments 126-127.

182 Interview held in Sydney, comment 128.

183 Interview held in Sydney, comment 129; Interview held in Sydney, comment 130.

184 Interview held in Sydney, comment 131.

185 Interview held in Sydney, comment 131; Interview held in Sydney, comments 132-133.

186 Interview held in Sydney, comment 134. See also, Interview held in Sydney, comments 135-139 and Interview held in Sydney, comments 140-141.

187 Interview held in Sydney, comment 142.

188 Interview held in Sydney, comment 143. See also Interview held in Sydney, comment 144: "You have to be able to develop relationships with clients and get work. So those are things you're evaluated on, but, for example, the developing - the business development piece, if they like you and they want you to be a partner, they give you opportunities to do that. They take you to meet clients. They - you'd get an opportunity - so when I was working with the partner I was working with I developed some very, very, very good relationships with clients. When she left she took those clients with her because they were her clients. At the moment I'm not having really that opportunity." See also Interview held in Sydney, comment 145: "the lawyers that those partners have sponsored or really kind of taken under their wing and got them on their client's matters, have all been men."

effective or influential sponsor was also seen as a major factor to gaining good work, which would then position you as having partner potential. For example, one woman commented that ‘whether or not a current partner has sponsored you and has supported you to bring you up into that position’ is a big factor<sup>189</sup> while another expressed it as needing to make sure you got on the ‘right train’ that would provide the good workflow.<sup>190</sup>

As discussed above, the introduction of a ‘workflow allocation’ strategy in which lawyers are appointed to work with partners (and where work is allocation by partners to lawyers within the team) has been one such strategy introduced to address unconscious bias in work flow.<sup>191</sup> While this approach may be current best practice, it is still not without pitfalls. It can still be the case that ‘men seem to have more informal networks of communication’ within the firm<sup>192</sup> and that men are still being prioritised based on unconscious bias and for what are perceived as masculine attributes of power, arrogance and eccentricity<sup>193</sup>. The difficulty of raising the issue of unconscious bias in work allocation and the experience of having it ‘shut down’ was also commented upon. For example, the issue that male lawyers were ‘get[ing] the good deals and the good clients and... given more trust’ while women were ‘getting stuck doing the more menial kinds of work’ was raised.<sup>194</sup> Yet raising the issue did not bring about any change:

It’s obviously a very sensitive topic to raise and if you tell your boss, especially if it’s a woman to say, not I think you’re sexist, but I think you have some unconscious bias and the patterns, they’re just entrenched patterns in the group which are disadvantaging the women, ...? until [month] when I said I wanted to work on a deal and the partner said, well I’ve put two senior male lawyers on that deal because it’s an all-male team and I want them to do the whole male bonding thing. I was like, did you really need to say that?<sup>195</sup>

This quote highlights that women partners can exhibit unconscious bias just as men do, and firms should not assume, for example, that because a woman is the head of a department there will not be any issues.

## 5.9 Strategies that Most Support Women’s Advancement to Partnership

A range of strategies were identified within firms which were felt to support women’s advancement to partnership. These included leadership programs<sup>196</sup>, mentoring<sup>197</sup>, sponsorship programs<sup>198</sup>, behavioural development and training programs,<sup>199</sup> coaching sessions,<sup>200</sup> business development programs,<sup>201</sup> panel sessions (eg, a ‘lean in’ type group), networking events<sup>202</sup>, groups for working parents<sup>203</sup> and people with carer responsibilities.<sup>204</sup> There were also a range of practical strategies implemented within different firms to meet particular identified needs. These included administrative assistance with managing day to day personal matters for partners and senior associates,<sup>205</sup> a kids room for school holiday periods,<sup>206</sup> provision of presentation skills development workshops,<sup>207</sup> voice coaching sessions<sup>208</sup> and IT strategies to support working flexibly and remotely.<sup>209</sup> While it is difficult to assess the effectiveness of these initiatives without formal evaluations, it is worth noting that a number of these initiatives correlate with best practice in diversity and inclusion as discussed within the current international literature.

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189 Interview held in Sydney, comment 147.

190 Interview held in Sydney, comment 148.

191 Interview held in Sydney, comment 149: “So there’s a whole training side to it. Then the final aspect, I suppose, in terms of initiatives, are some things that I’m not sure all firms are doing. One of them is what we call workflow allocation and that is having in our large offices - so in Australia and London in particular, we have people who are appointed to work with the partners. To ensure that the way that the work is allocated by partners to lawyers within the team is done in a way that is gender neutral. But essentially allocating the work based on the capacity of lawyers - which also means that you may - that what we’ve found in the past is, there may be an unconscious bias.”

192 Interview held in Sydney, comment 150.

193 Interview held in Sydney, comment 151.

194 Interview held in Sydney, comment 152.

195 Interview held in Sydney, comment 153.

196 Interview held in Sydney, comment 154; Interview held in Sydney, comment 155; Interview held in Sydney, comment 156.

197 Interview held in Sydney, comments 157-158; Interview held in Sydney, comments 159-162; Interview held in Sydney, comments 163-164; Interview held in Sydney, comment 165; Interview held in Sydney, comment 166; Interview held in Sydney, comments 167-169; Interview held in Sydney, comment 170.

198 Interview held in Sydney, comment 171; Interview held in Sydney, comment 172.

199 Interview held in Sydney, comment 172A. These programs are available for men and women lawyers.

200 Interview held in Sydney, comments 173-176; Interview held in Sydney, comment 177.

201 Interview held in Sydney, comment 178.

202 Interview held in Sydney, comments 179-180.

203 Interview held in Sydney, comments 181-185; Interview held in Sydney, comments 186-189.

204 Interview held in Sydney, comments 190-191.

205 Interview held in Sydney, comment 192.

206 Interview held in Sydney, comment 193.

207 Interview held in Sydney, comments 194-197.

208 Interview held in Sydney, comments 198-202.

209 Interview held in Sydney, comment 203.

Strategies that encourage women (and men) to work flexibly were seen as particularly effective in supporting women's advancement within firms. As such, the technological strategies that support women to take up flexible work were seen as necessary to promote the 'mindset that you don't need to be in the office to do your work...'<sup>210</sup> It was seen as particularly important for women to have role models of female partners working flexibly, ensuring that flexible work is seen as acceptable at all levels of the firm.: One female equity partner recognised the importance of her example as a role model:

... I do think it assists if you've got a female partner who works flexibly because it means you can see that it can be done...the feedback I'm getting is that if enough female lawyers can see how female partners are managing it, then it gives them confidence that they could do it themselves. My attitude is I work the way I work, I do what I have to do. If I'm here at 10 instead of at 7.30, so be it. But everyone knows they can get me on the mobile or email. I often take calls from clients on the way in, way out. If people understand and see enough of how another female partner is doing it, they will have the confidence to do it themselves.

If they're not seeing it, and if they're just seeing people come in, and they're in the office 7.30 to 7.30 - just the traditional way life has always been - then they may not have the confidence to understand how they could do it. I think if they see more male partners do it, too [that would be helpful].<sup>211</sup>

While there was a lot of agreement on the importance of role models engaged in flexible work successfully, one participant discussed the complexities of being the role model for others. One of the issues for lawyers working flexibly, who may be on a percentage of a full time role, such as 70%, is 70% of what? While the required billable hours may be quantifiable in percentage terms, the other types of work are not so easily pro-rated, and there are generally no transparent guidelines for what is expected at a percentage. This means that women on flexible work may do more than, say, 70% of these others types of work in order to ensure that they are seen as pulling their weight. At the same time, as role models, they may be setting a high bar. One woman commented:

[One woman who we wanted to be thinking about partnership in the near future came back working flexibly] had said, well, I wouldn't want to be a partner because I can't do what you do and what [A, another female partner working flexibly] does. ... Then it's like - okay, by pushing ourselves to make sure that we feel we're contributing, are we having the opposite effect of what we want to? You do constantly, it's like this - I want to contribute and I want to make sure that I'm doing the right thing and also I'm doing things because I enjoy doing them.

There is that ... I hope you wouldn't do this unless you enjoyed doing it. But by pushing yourself beyond, perhaps, what's reasonable to do, is it actually having more of a negative impact [by implicitly setting a high bar for other women] than a positive impact?<sup>212</sup>

This woman was eventually comfortable with being open about the difficulties and conflicting feelings about work and family, and the second woman did manage flexible work and is heading for partnership.

But the response to another women saying 'I can't do what you do' was to feel guilty about whether she was giving enough time to her children:

[And I couldn't continue the conversation, my response was] my God, I'm such a horrible mother and it's just the constant guilt which is I'm not doing enough at work, I'm not doing enough at home.<sup>213</sup>

Her honesty highlights the complexities for women managing flexible work, families, and being role models thoughtfully and ethically. But her honest assessment of her own motivations for working harder than might have been necessary, and the tension between work and family commitments are evident.

Strategies implemented to support senior people working flexibly, including at equity partner level, were seen as encouraging the progression of women within firms.<sup>214</sup> One effective and innovative strategy includes offering practical administrative support services to key talent at peak work periods, which is designed to assist with the balancing of work and family commitments. This was identified as an important attraction and retention strategy by management:

We want these people here for the long haul. This is about long term. Some of them will become partners. We have lots of them do. Some may not want to do that. [So they can make decisions,] without ... the thought, the dreaded thought of ... I don't want to become a partner because I don't want to do that. I don't want be like that. I don't want to be like that person. ... [and] the reality is that it fits within our diversity and retention strategy,

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210 Interview held in Sydney, comment 204.

211 Interview held in Sydney, comment 205.

212 Interview held in Sydney, comment 206.

213 Interview held in Sydney, comment 207.

214 Interview held in Sydney, comment 208.

because we were losing those females at the Senior Associate, junior partner level.<sup>215</sup>

If we can just take some of the pressure off the home list, because at the end of the day, you're more profitable for me here - the other day, as I said ..., if I can get someone out to change a lock at your place and you give me another hour, guess what - my service...<sup>216</sup>

This view, and the initiative in general, was supported by lawyers at the firm.<sup>217</sup>

Three of the firms that participated in this pilot project have established an identified diversity committee<sup>218</sup> whose broad role it is to promote workforce diversity and to review and monitor workplace policy and practices to ensure that these were furthering the firm's diversity and inclusion goals. Membership of these committees varied, with some/most made up exclusively of partners while others included representation from different parts and levels of the firm. In the remaining firm without an identified diversity committee, responsibility for diversity and inclusion rests with the executive committee itself. Other committee based initiatives included conducting unconscious bias training for committee members sitting on partner admissions committee and ensuring a balance between both genders was present.<sup>219</sup>

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215 Interview held in Sydney, comment 209.

216 Interview held in Sydney, comment 210.

217 Interview held in Sydney, comment 211.

218 Interview held in Sydney, comment 212; Interview held in Sydney, comment 213; Interview held in Sydney, comment 214; Interview held in Sydney, comment 215.

219 Interview held in Sydney, comment 216.

## 6 RECOMMENDATIONS

### 6.1 Current best practice for diversity and success in large law firms

This pilot qualitative research study reveals that four of the top-achieving national law firms in Australia on gender equity criteria are engaging with many of the best practice initiatives for diversity and inclusion recommended by the current national and international research and scholarship. These best practice initiatives include: a commitment by leaders at the top of the firms; a focus on inclusive cultures; the introduction of retention strategies; professional development opportunities; mentoring; affinity groups; flexible work policies; engagement in evaluation and self-assessment processes; and, in some instances, providing specialised administrative support and the implementation of targets. What is apparent, however, is that the current best practices have yet to achieve significant advancement of women, or to break through the glass ceilings that continue to operate for women in large Australian law firms.

This pilot project, while limited in scope, has identified some practices and initiatives that are innovative in light of the international literature in the area, and which Australian firms should consider implementing. It is important to note that all of these initiatives and practices are currently in place in Australian law firms that lead the way in diversity and inclusion of women. The recommendations are grouped according to the topics arising from the research, as set out in section 5 of this Report, and include:

#### 6.1.1 Commitment to Diversity at the Top of the Firm

- a) Establish a diversity committee which is made up of partners at both the practice group level and senior management level.
- b) Implement diversity key performance indicators (KPIs) for managing partners, practice or unit heads and other managers.
- c) Consider implementing targets for women in partnership (including equity partnership) and leadership roles, including the Board, Executive team, practice heads and significant client relationship roles.
- d) Conduct reviews of pay equity, including reviewing the performance appraisal process, and what lawyers are being paid, for gender bias.
- e) Monitor workflow allocation from the top for gender bias
  - iv. Use high level statistics combined with fine-grained analysis at the practice group level to track potential unconscious gender bias and ensure merit is rewarded
  - v. Look underneath billable hour statistics to efficiency to see who is working most productively
  - vi. Give practice managers KPIs that include gender neutral workflow allocations

#### 6.1.2 Firm Culture

- a) Develop cultural leadership by encouraging women in leadership positions to 'bring their whole selves to work'.
- b) Ensure male partners are a part of actively setting the culture and tone of the firm in terms of gender diversity.
- c) Commit to intersectional diversity beyond gender alone.

#### 6.1.3 Mentoring and Affinity Groups

- a) Implement an integrated series of mentoring programs for each level of lawyers, for example:
  - v. New lawyers
  - vi. Mid-level lawyers
  - vii. Senior Associates: leadership pathways programs preparing associates for partnership including training in client retention and management, etc. Ensure that women are adequately represented in these programs.
  - viii. New Partners
- b) Educate the firm, especially men in the firm, as to why mentoring and affinity groups are necessary in order to combat resentment.
- c) Allow mentees to indicate a preference for particular people as mentors, or for a mentor within or outside

the practice group.

- d) Develop affinity groups for working parents and carers.
- e) Develop and encourage 'sponsorship' relationships for both women and men Senior Associates
  - v. Identify existing informal sponsorship and do a fine grained analysis for unconscious bias by looking at performance reviews, hours, and the whole range of contributions to the firm
  - vi. find ways to allow conversations about sponsorships to open up
  - vii. consider implementing formal sponsorship programs
  - viii. Sponsors should be senior partners or those with significant input into partnership decision-making

#### **6.1.4 Flexible Work, Part Time and Job Sharing Policies**

- a) Encourage rethinking working and living within practice groups, and provide examples from within the firm or in other firms where practice groups have high proportions of members working flexibly:
  - vii. break down 'silos', and consider developing broader areas of expertise as stimulating, rewarding, and even inspiring;
  - viii. Develop a team approach to flexible work across a practice area, including collaborating on matters and developing strong briefing and debriefing practices;
  - ix. Ensure that lawyers who work flexibly maintain client contact;
  - x. Recognise the value and talent of lawyers and value retaining high performing lawyers;
  - xi. Value team work and achievements alongside individual achievements; and
  - xii. Balance profits and income with working and living well.
- b) Allow and encourage flexible and remote work practices across all levels of seniority.
- c) Ensure that lawyers working flexibly continue to receive interesting, challenging and quality work.
- d) Communicate with clients in relation the style of work and the work environment in order to manage expectations.
- e) Develop strategies that ensure that women who have taken time out to have children and then return to flexibly work, are reintegrated in a way that is as supportive and protective as possible to minimise damage to their careers. For example, keeping lawyers involved with clients while on parenting leave.
- f) Consider providing access to personalised administrative services.

#### **6.1.5 Self Assessment**

- a) Include diversity questions in exit interviews and staff surveys. Ensure that information gathered is provided to management and diversity committees.

#### **6.1.6 Criteria for Partnership and Partnership Track**

- a) Make the criteria and process for partnership clear and transparent and communicate it to lawyers.
- b) Value people management, team leadership, and developing and mentoring younger lawyers as an aspect of the criteria for partnership.
- c) Ensure that other criteria for partnership, beyond fee-generating activities, are communicated to lawyers and Senior Associates.
- d) Actively manage the career expectations of mid-career lawyers.

#### **6.1.7 Strategies Supporting Women's Advancement to Partnership**

- a) Implement strategies to support senior people to work flexibly, including at equity partner level.
- b) Develop IT strategies to support people working flexibly and remotely.
- c) Provide presentation skills and other development workshops.
- d) Provide a kids' room for school holiday periods.

## 6.2 Where to from here?

This study suggests that lawyers and Senior Associates lack clarity around the criteria for partnership, and that both partners and associates identify some subjectivity in the nature of the assessment and balancing of the criteria. Women at Senior Associate level continue to identify barriers to partnership, issues around communication of criteria for advancement to partnership, clarity of processes for performance review, clarity of information regarding whether or not one is on partnership track, and management of progression.

These findings are consistent with the national and international research discussed above, which concluded that critiques of the barriers to the advancement of women in the legal profession, and the flawed and exclusionary criteria for advancement, point beyond recommendations about diversity programs and flexible work practices to the need for fundamental structural changes and systemic monitoring, including rethinking the criteria for success and the dominant partnership model. The research also suggests that addressing under-representation at senior levels in large law firms, and the criteria for advancement, will require rethinking the competencies required for successful law firm practice and, in parallel, reshaping the models and criteria for partnership and equity partnership with careful attention to research on diversity, especially issues of firm culture and values. It is therefore appropriate to briefly discuss research on competencies.

The ‘competency movement’ breaks down jobs into competencies, or the behaviours, skills and knowledge required to do the job well, and then creates different levels of proficiency for each competency, up to a high level of ‘mastery’.<sup>220</sup> A firm may identify a number of core competencies, such as around ethics and client service, which apply to everyone in the firm, and then specific competencies for lawyers as opposed to support staff or other job categories. It is said that once competencies are identified and made transparent they can be taught, measured and rewarded.<sup>221</sup> In New South Wales competencies were brought to the profession of law in 1992, when the New South Wales Law Society developed a specialist accreditation scheme based on a competencies model.<sup>222</sup>

It has been argued that competency-based performance models can be used effectively to shift firm culture at the levels of both patterns of behaviour and the belief systems and values that underlie those behaviours.<sup>223</sup> Manch argues that replacing the traditional narrow partnership criteria with a competency framework for evaluating performance may have the potential to provide a fairer, more transparent and objective means for measuring performance. It may also assist with creating a collective culture, as people are measured against clearly stated, shared criteria rather than competing with each other. Subjective assessments of performance and unconscious bias may have less room to flourish.<sup>224</sup>

Responding to diversity issues will require a shift in law firms’ culture and cultural barriers. Bagust argued that ‘[a]ny attempt to transform the systematic barriers that underpin the continuing gender divide in corporate law firms will require nothing less than destabilising the culture and mindset of those organising the corporate workplace’.<sup>225</sup> Bagust’s study suggests that the tasks assigned to lawyers who work flexibly are crucial to the firm, though undervalued. Other scholarship highlights the increasing need for identification of competencies beyond those traditionally rewarded as necessary for firm success in the new normal, including people management, committee participation, quality assurance, team participation and a range of other skills.<sup>226</sup>

Interestingly, both Manch’s identification of firm collectivism and the competency movement’s identification of the broader range of skills necessary in the new normal appear to map on to some of the skills identified in the diversity literature as those more likely to be performed by women, and less likely to be rewarded in traditional partnership criteria. For example, team building, management and emotional skills are necessary to a sustainable and successful legal practice in the new normal, but not part of the traditional partnership criteria. As discussed above, women may be more committed to *pro bono* work and more likely to be active on committees, both of which are integral to the life of law firms.

In a recent study that links competencies and diversity Carstens and De Kock identify the *management* competencies necessary for a thriving diverse workforce.<sup>227</sup> They develop a set of diversity management competencies designed to

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220 S Manch, ‘Competency-Based Performance Management: A Remedy for Eroding Firm Culture’ (2013) 11(1) *University of St Thomas Law Journal* 39, 42–45; see also Len Holmes, ‘HRM and the Irresistible Rise of the Discourse of Competence’ (1995) 24(4) *Personnel Review* 34.

221 Manch, above n 220, 43–44.

222 A Gonczi, ‘Competency Based Assessment in the Professions in Australia, Assessment in Education: Principles, Policy and Practice’ (1994) 1 *Assessment in Education: Principles, Policy & Practice* 27, 37–40; Law Society of New South Wales, ‘Specialist Accreditation Scheme: 2016 Guide to Application and Assessment’ (Law Society of New South Wales, 2016).

223 Manch, above n 220, 42.

224 Manch, above n 220, 45.

225 Bagust, above n 28, 138, 160.

226 Mottershead and Magliozzi, above n 48; Lopes, above n 2.

227 J Carstens and F De Kock, ‘Firm-Level Diversity Management Competencies: Development and Initial Validation of a Measure’ (2016) 28(15) *The International Journal of Human Resource Management* 1.



foster perceptions of: an inclusive climate, where employees from diverse groups feel that they fit in, advancement opportunities recognize all relevant contributions and power and influence in the firm is distributed among all identity groups.<sup>228</sup> There is some support for the link between these firm characteristics and firm performance.<sup>229</sup> The focus is on how effective diversity management should operate at the level of organizational practice, and there is an emphasis in the competencies identified on changing the ‘diversity climate’, or culture, of a firm.<sup>230</sup> The study develops a conceptual model and empirical measure for firm diversity management competency, which, however, needs further empirical evaluation.<sup>231</sup>

The emphasis on creating an inclusive diversity climate, changing law firm culture where necessary, combined with Holmes’ recognition of the importance of context in the development and implementation of competency frameworks and Bagust’s call for destabilising masculinist firm culture, all point to the importance of reshaping and reconstructing law firm culture, as well as partnership models, as an integral part of the advancement of women in law firms.

This approach to reconstructing and reshaping law firm culture and partnership models provides the greatest potential to respond to issues of advancement, attrition and lack of re-engagement of women in law firms. Proposing a project focusing on diversity and competencies, and reshaping partnership models, also responds to calls for research done in collaboration between academics, professional bodies and law firms.<sup>232</sup> Indeed, Australian law firms have been calling for assistance and have expressed their commitment and openness to improving. For all of these reasons, a larger project linking diversity and inclusion imperatives is called for, and would have the potential to be world-leading.

The proposed project itself would involve four aspects: first, reviewing existing Australian and international literature to identify effective gender equity strategies in law firms and, second, a full scale qualitative research project on effective gender equity strategies operating in law firms across Australia. Third such a project would review performance and partnership criteria for bias, and finally investigate and produce a best performance measurement and partnership model that recognises the full range of competencies necessary for successful law firms. It would investigate scholarship across the areas of diversity and competencies and would pursue the following key recommendations of the NARS Report<sup>233</sup> including:

- reviewing existing Australian and international literature to identify effective gender equity strategies in law firms (88);
- research effective gender equity strategies operating in law firms across Australia (88);
- review performance/promotion criteria to ensure they are ‘bias free’ (91); and
- investigating performance measurement models which include revenue generation not exclusively limited to direct billable hours, and recognition of the full range of competencies necessary for law firm success in the twenty-first century, to develop new partnership models available to law firms (91).

The findings of the pilot addressed in this report will feed into this larger, collaborative project, which will respond to calls for research done in partnership between academics, professional bodies and law firms.<sup>234</sup> The first two prongs of the project build directly on the pilot project. These two prongs include an in-depth review of national and international research on effective gender equity strategies, and extend the investigation of current best practices in Australian law firms by identifying effective diversity initiatives across a wider range of firms to develop an industry-wide current best-practice standard. The third and fourth prongs of the research respond to calls nationally and internationally, including in the NARS Report, and directly from some law firms, for review of the criteria and competencies necessary for success, diversity and inclusion. This is likely to involve the interdisciplinary mapping of skills through a convergence of critical readings of the ‘competency movement’ literature and the ‘diversity’ literature. It will rework the competencies required for successful law firm practice and, in parallel, reshape models and criteria for partnership and equity partnership with careful attention to research on diversity, especially issues of firm culture and values. It will focus on producing new models for partnership that value all competencies necessary for firm success in the new normal, for reaching diversity goals, equity and justice, and for shifting firm culture consistent with these changes. The performance measurement

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228 Ibid 7–9.

229 Ibid 6–7, 8–9.

230 Ibid 5.

231 Ibid 22.

232 Pinnington and Sandberg, above n 11, 628 conclude that “academic researchers have a role to play in developing theories of ...[law firms] which represent more adequately issues of employee diversity, professional careers and the glass ceiling, such as the inclusion of women in the equity partnership.” The involvement of practitioners in a study, as participants or as researchers, would be particularly valuable and would overcome access constraints. See also Lopes, above n 2, 224.

233 NARS Report, above n 1.

234 Pinnington and Sandberg, above n 11; Lopes, above n 2, 224.

and partnership model produced would be designed for implementation through a three-stage scheme. This project will take the research and initiatives on diversity in law firms to the next level; the identification of best practices and development of partnership models for diversity and inclusion, will, taken together, position the Australian legal profession and collaborative organisations, such as the LCA, AWL and WLANSW, at the leading edge on diversity and inclusion internationally.

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## 8 APPENDICES

### 8.1 Interview Questions: Executive Partner

1. What diversity and inclusion initiatives and policies does the firm have in relation to:
  - Hiring?
  - Retention?
  - Firm culture and inclusion?
  - Professional development?
  - Leadership?
  - Regulation; and
  - diversity initiatives?
  - Ask for information and policies in advance?
2. Do they have a commitment to diversity and inclusion at the top of the firm?
  - Is the Board or Management Committee actively engaged?
    - If so, how, and what do they do?
  - Is it structurally implemented in recruiting targets?
  - Performance evaluation of lawyers?
  - Reward systems of managers?
3. Does the firm carry out self-assessment through
  - periodic survey?,
  - bottom up evaluations?
  - interviews with former and departing lawyers?
4. Do they have
  - ongoing monitoring?
  - flexibility manager?
5. Do they have:
  - Mentoring?
  - affinity groups?
  - work/life/family balance policies that recognise and encourage diversity?
6. What strategies have been implemented within the firm that most support women's advancement to partnership?
7. What criteria for salary and equity partnership does the firm use?
  - Do they have a transparent, written criteria and process?
  - What skills are rewarded?
  - What is the weighting of such aspects as:
    - billable hours
    - bringing in clients
  - Do they reward
    - Client management and retention?
    - Committee membership?
    - Relationships skills?
    - Adaptability?

- Structuring skills?
  - Team leadership skills, eg on a deal?
  - Pro bono work?
8. Are women concentrated in some practice areas?
- If so, which ones?
  - Are hourly billing rates comparable in these areas?

## **8.2 Interview Questions: Female Equity Partner**

1. How long have you worked at your current firm?
2. How long have you been an equity partner?
  - What was your experience of making partnership?
3. What criteria for salary and equity partnership does the firm use?
  - Do they have a transparent, written criteria and process?
  - How was this information communicated to you?
  - What skills are rewarded?
  - What is the weighting of such aspects as:
    - billable hours?
    - bringing in clients?
  - Do they reward
    - Client management and retention?
    - Committee membership?
    - Relationships skills?
    - Adaptability?
    - Structuring skills?
    - Team leadership skills, eg on a deal?
    - Pro bono work?
4. Is there anything else that you'd like to comment on in relation to partnership?
5. Are women concentrated in some practice areas?
  - If so, which ones?
  - Are hourly billing rates comparable in these areas?
6. Are you aware of the firm's diversity and inclusion initiatives and policies?
  - Does the firm
    - make the policies easily available?
    - communicate information about the policies?
    - Encourage uptake of the initiatives?
  - Does the firm have flexible work, part time and job sharing policies?
    - What does flexible work mean?
    - What is your understanding of these policies?
    - How do the policies work for women?
7. Have you taken parental leave?
  - What was your experience of the firm's attitude toward women who take parental leave?
  - Did you notice a change in the type or nature of the work you were given after you returned from

- parental leave?
  - Do you feel it has had an impact on your career trajectory to partnership?
  - Any other comments or experiences that you want to share?
8. Have you worked 'flexibly' or part time?
- What was your experience of the firm's attitude toward women who take parental leave?
  - Did you notice a change in the type or nature of the work you were given after you began working flexibly?
  - Do you feel it has had an impact on your career trajectory to partnership?
  - Any other comments or experiences that you want to share?
9. Does the firm have
- Mentoring,
  - affinity groups and
  - work/life/family balance policies that recognise and encourage diversity?
  - Have you engaged in mentoring or affinity groups?
    - What were the pros and cons of these experiences for you?
10. Do they have a commitment to diversity and inclusion at the top of the firm?
- Is the Board or Management Committee actively engaged?
    - If so how and what do they do?
  - Is it structurally implemented in recruiting targets?
  - Performance evaluation of lawyers?
  - Reward systems of managers?
11. Do they carry out self-assessment through
- periodic surveys?
  - bottom up evaluations?
  - interviews with former and departing lawyers?
12. Do they have
- ongoing monitoring?
  - flexibility manager?
13. What strategies have been implemented within the firm that most support women's advancement to partnership?

### **8.3 Interview Questions: Female Senior and Junior Associates/Lawyers**

1. How long have you worked at your current firm?
2. Are you interested in becoming a partner at this firm?
3. What policies does the firm have in relation to:
  - Flexible working arrangements?
  - Parental leave?
  - Promotion?
4. What has the firm communicated to you about the pathway to becoming a partner?
5. What strategies have been implemented within your firm that most support women's advancement to partnership?
6. What criteria for salary and equity partnership does the firm use?
  - Do they have a transparent, written criteria and process?



- How was this information communicated to you?
  - What skills are rewarded?
  - What is the weighting of such aspects as:
    - billable hours?
    - bringing in clients?
  - Do they reward
  - Client management and retention?
  - Committee membership?
  - Relationships skills?
  - Adaptability?
  - Structuring skills?
  - Team leadership skills, eg on a deal?
  - Pro bono work?
7. Is there anything else that you'd like to comment on in relation to partnership?
8. Are women concentrated in some practice areas?
- If so, which ones?
  - Are hourly billing rates comparable in these areas?
9. Are you aware of the firm's diversity and inclusion initiatives and policies?
- Does the firm
    - make the policies easily available?
    - communicate information about the policies?
    - Encourage uptake of the initiatives?
  - Does the firm have flexible work, part time and job sharing policies?
    - What does flexible work mean?
    - What is your understanding of these policies?
    - How do the policies work for women?
10. Have you taken parental leave?
- What was your experience of the firm's attitude toward women who take parental leave?
  - Did you notice a change in the type or nature of the work you were given after you returned from parental leave?
  - Do you feel it has had an impact on your career trajectory to partnership?
  - Any other comments or experiences that you want to share?
11. Have you worked 'flexibly' or part time?
- What was your experience of the firm's attitude toward women who take parental leave?
  - Did you notice a change in the type or nature of the work you were given after you began working flexibly?
  - Do you feel it has had an impact on your career trajectory to partnership?
  - Any other comments or experiences that you want to share?
12. Does the firm have
- Mentoring?
  - affinity groups?
  - work/life/family balance policies that recognise and encourage diversity?

- Have you engaged in mentoring or affinity groups?
  - What were the pros and cons of these experiences for you?
- 13. Do they have a commitment to diversity and inclusion at the top of the firm?
  - Is the Board or Management Committee actively engaged?
    - If so how and what do they do
  - Is it structurally implemented in recruiting targets?
  - Performance evaluation of lawyers?
  - Reward systems of managers?
- 14. Do they carry out self-assessment through
  - periodic surveys?
  - bottom up evaluations?
  - interviews with former and departing lawyers?
- 15. Do they have
  - ongoing monitoring?
  - flexibility manager?
- 16. What strategies have been implemented within the firm that most support women's advancement to partnership?

