

# Taking up the challenge

women in the legal  
profession



**Victorian  
Women  
Lawyers**



PREPARED FOR VICTORIAN WOMEN LAWYERS BY GABBY TRIFILETTI  
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## Preface

Women have been practising law in Victoria since 1923 yet in 1999 we have been described as the fringe-dwellers of the jurisprudential community. Over 50% of university law graduates are women, so why aren't there more female partners in private law firms, why do women earn less than men and why don't women stay in legal practice? This report is not a continuing survey of existing work practices, attitudes and empirical evidence supporting the progress of women in the legal profession. This report confirms that there is sex discrimination and gender bias in the legal profession which is underpinned by other forms of discrimination and cultural bias.

So what of the "legal culture"? Competition influences the legal profession, price and not quality is already driving client preferences in some instances. Paid work is increasingly hostile to a balanced life. Excessive work hours and work related stress is influencing career choices yet many lawyers still have a desire to balance work and other responsibilities.

The aim of the "Taking up the Challenge" project was to address issues such as

- why lawyers are dissatisfied with working in the legal profession
- explore the link between dissatisfaction, turnover and productivity
- investigate gender and age related issues

The ultimate result of the report is a framework for change. The report summarises the major findings from various research sources to allow VWL to come up with an action plan that addresses the changing nature of work and what this means for lawyers and the law. The report highlights the continual need for the legal profession to be aware of issues facing women in the law and for us all to persist in identifying and challenging the status quo.

VWL would like to thank Gabby Trifiletti for her efforts in preparing this report. We would also like to acknowledge the Victorian Law Foundation which provided the major funding for the project, and our members who assisted us in providing feedback regarding the earlier versions.

Elizabeth Bishop, Convenor  
*Victorian Women Lawyers*  
May, 1999

# Forward

A recent study by Griffith University (commissioned by the federal Government) has put to rest the myth that introducing more flexible work practices is additional cost businesses should not have to bear.

The study found that work places with more flexible work practices enjoyed higher levels of productivity.

There have been a number of surveys investigating gender issues, job satisfaction, staff turnover and work practices within the legal profession. In fact since 1994 there have been no fewer than 15 studies or reports published across Australia.

## Women in the profession: a few statistics

A few statistics assist us to highlight the key issues.

1. Women are seriously under represented at the partner level. There is no support for the theory that sufficient numbers and the passage of time will eventually bring about equity in women's and men's status in private law firms. (Keys Young 1995)
2. Level of satisfaction is highest amongst females who are partners and lowest amongst females who are employees. (Victoria Law Foundation, 1996)
3. Career intentions show that 30% of all lawyers are considering leaving their position (Victoria Law Foundation, 1998)
4. To replace a fourth year lawyer who leaves a city firm has been costed at \$145,000 (Beaton-Wells, 1998)
5. More flexible work practices leads to higher productivity (Griffith University, 1999).

Basically the investment made by both the individual lawyer and the employing firm into training and development is enormous.

Satisfaction has two aspects. Satisfaction of the individual lawyer with their chosen career and all it offers and satisfaction from the firm's point of view in relation to an adequate return on their investment and the long term development of their business.

It would appear from the research to date that neither party is satisfied.

To use the 90's management lingo we are looking for a "win - win". Employees want enjoyable and rewarding careers. Law firms want to provide good client service and enjoy the profits of their efforts. Whilst this report focuses on the issues relating to women, it is important to note that the research has now shown that anecdotal evidence regarding males is robust: young male lawyers are leaving the profession in ever increasing numbers. This finding begs the question: is this a gender issue or a generation issue, or a potent combination for the two?

# Are you ready for the challenge?

As identified by this project, the main challenges facing law firms are:

1. Encouraging lawyers in all areas of the profession to identify and challenge the status quo to ensure that the issues facing women in the profession are seen for what they are, and positive changes are implemented.
2. Recognising the differing needs of lawyers as individuals and developing work practices and policies which allow for flexibility in terms of all outside work commitments (not just families).
3. Providing alternatives to the traditional law firm structure, as the partnership is not seen as conducive to lawyers who have interests outside the practice of law.
4. Identifying opportunities for career developments which are alternatives to partnership but still recognise the skills and expertise of more experienced lawyers.
5. Encouraging all stakeholders in the legal profession to acknowledge the strengths which diversity brings to the practice of law.

*Kriss Will and Georgina Frost*  
*Victorian Women Lawyers*  
*Executive*

# Contents

Preface	<i>i</i>
Forward	<i>ii</i>
Introduction	<i>1</i>
Key Issues	<i>6</i>
Australia: Research regarding women lawyers	<i>17</i>
The Way Forward: Conclusions and suggestions for future strategies and research	<i>19</i>
Sources and materials consulted	<i>23</i>

# Introduction

## Background

Victorian Women's Lawyers (VWL) has been concerned for some time that sex discrimination and gender bias exist in the legal profession and that this is underpinned by other forms of indirect discrimination and cultural bias. To date, this had been based upon an awareness that other organisations and academics within Australia and overseas had undertaken research and reached these conclusions, and upon the experiences of its members and anecdotal evidence.

Although women are graduating from Law Schools in roughly equal proportions to men, their presence is not reflected at the higher levels of the profession. Further VWL members' experience is that balancing work and private and family life commitments becomes increasingly difficult for them as they attempt to progress within the profession. The task of motherhood is seen as particularly difficult to reconcile with a demanding career in the law.

Increasingly, however, the dissatisfaction with the profession's inability to accommodate family and private life is being seen as a challenge to be faced by men as well as women practitioners. Not only are female lawyers with less than five years' experience leaving the private firms in ever-increasing numbers, but also male lawyers with a similar brief experience of life in a law firm, are now joining them. The private profession is losing its highly skilled and valued human resource base, on which the very future of such firms relies. Young lawyers are voting with their feet and are moving predominantly to non-legal and legal positions in private industry and commerce, to the bar and to the public sector.<sup>1</sup>

Policy makers outside the legal profession need not be complacent at these findings. Studies looking at the lives of women in the public sector, including universities, have found that the reality of such work places has not always measured up to the haven of flexible work practices, supportive maternity leave practices and "merit-based" promotion that they appeared to promise.<sup>2</sup>

*This suggests that there are serious **organisational and management issues** to be embraced by the whole profession - including employers in the private and public sector - **which affect women and men.***

## Aim of this Project

The specific aim of this research project is to:

*Build a framework for change by summarising the major findings from various research sources to allow the VWL to develop an action plan for change based upon these findings.*

## Focus of Report

Acknowledging that there were many potential issues which could have been investigated, and that VWL had a limited time frame and budget for this project, it was decided that the report would focus upon six key issues.

1. Highlight the main issues that arise from the research in relation to why lawyers are dissatisfied with working in the legal profession.
2. Highlight any links between dissatisfaction and turnover and productivity.
3. Highlight any gender or age related issues.

<sup>1</sup>Victoria Law Foundation, **A Ticket to Where? Legal Education, practical training and employment**, Final Report, pp. 25 - 27. (Mark Herron, 1998)

<sup>2</sup>See: NSW Attorney General's Department and NSW Department for Women, **Gender Bias and the Law: Women Working in the Legal Profession**, Report of the Implementation Committee, October 1996, at p.8 (on government practices); and Thornton, Margaret, **Dissonance and Distrust: Women in the Legal Profession**, Oxford University Press, Melbourne, 1996, at pp. 106 et. seq. (on life in the academy.)

<sup>3</sup>Other reports, which have been undertaken at the Commonwealth level and cited the problems faced by women lawyers in the wider context of the legal system generally, are recommended to readers, but have not been specifically consulted and referred to here. These include: Australian Law Reform Commission, Report No. 69, Part 11 - **Equality Before the Law: Women's Equality** (1994) and the Senate Standing Committee on Legal and Constitutional Affairs, **Gender Bias and the Judiciary** (1994.)

<sup>4</sup>The exception is New Zealand author, Gill Gatfield's book, **Without Prejudice: women in the law**, Brooker's Legal Information, Wellington, New Zealand, 1996. The book provides an excellent and comprehensive insight into the history of women lawyers in New Zealand, the status of women lawyers in New Zealand today, and suggestions and projections about the future. Interestingly, Gatfield's research on women lawyers' status in the profession, and the specialities and types of work they are concentrated in, strongly resemble the Australian patterns. (as discussed further in chapter two.) The existence of gender bias in the legal system and the courts has been the subject of a large and burgeoning literature in North America, in particular. There is not scope for the evaluation of this comparative material here, but see, for example, Rosemary Hunter and Helen McKelvie, **Equality of Opportunity for Women at the Victorian Bar, A Report commissioned and published by the Victorian Bar Council**, July 1998, at pp. 1 - 3, for a brief overview of some of this literature.

4. Consider alternative structures for legal firms ie. part-time partnership, alternative lateral career paths to partnership eg. senior counsel, consultant.
5. Consider alternative styles of work, concentration on certain areas of practice.
6. Note any data or analysis on measurements of productivity in relation to budgets and hours of work.

## Outcomes

- Researcher to summarise main issues from background information and highlight related sources in Issues Paper-style Report.
- VWL to extrapolate Report to programs to educate legal practitioners about the changing nature of work and what this means for lawyers and law firms.
- Australian Women Lawyers to consider addressing the issues raised by the report on a national basis.

## Methodology

Within the limited time frame and budget, VWL provided the researcher with a necessarily selective range of resource materials, to which the researcher added some further sources (see Bibliography for full reference list).<sup>3</sup>

The objective here was not to undertake substantial original research, nor to exhaustively research all materials in the area, but rather to draw together some of the key findings in recent relevant reports and highlight common themes and findings.

Most of the materials used are Australian<sup>4</sup>, with the bulk of them being produced in Victoria and NSW. This report does not purport to comprehensively present the state of all Australian research on women lawyers. It is acknowledged that there will be a skew towards Victorian material given VWL's members' interests. The references to activities and reports from states other than Victoria are intended to give an indication of some other similar projects being undertaken. It is hoped, however, that this report will contain information of relevance and use to legal employers and women lawyers groups throughout Australia.

The researcher contacted AWL representatives in each of the Australian states to make informal inquiries as to any current or planned relevant projects being conducted. In particular, information was sought as to whether recommendations made in previous reports on women in the profession, which had been undertaken in NSW, Tasmania and Western Australia, had been acted upon. The results of these inquiries are not comprehensive, but within the time-frame and scope of this project were able to set some context and give a general overview of progress being made throughout Australia.

As the central aim of this project was to provide the foundation upon which an action plan for change could be built, the strategies and recommendations focused upon in other reports, and the recommendations made in this report are selected because of their capacity for **practical** implementation.

## Definition of “legal profession”

The term “*women in the legal profession*” is broadly defined for the purposes of this study. This report has attempted to highlight materials and focus upon issues which will be of relevance to all employers of women lawyers, including private firms, the public sector (including universities) and private commerce and industry. Most data to date, however, has focused on the experience of women in private firms, with some more recent work directed at women in the public sector (such as the ongoing NSW Response to the Keys Young Report.)

Clearly some issues will be of greater relevance and use to some sectors than others, and suggestions for change may have to be adapted to suit the needs of particular work places and their own work practice procedures and guidelines.

This report does not attempt to directly address problems faced by women barristers, which have been the subject of a detailed recent report. It is hoped, however, that women lawyers will give consideration to the concerns raised, particularly in relation to solicitors’ briefing practices, in that report.<sup>5</sup> Further, some of the strategies in relation to creating a work place which is supportive of women, particularly those with family responsibilities, may well be applicable and useful to women at the Bar. (See Recommendations for suggestions on increasing links/formalising links with the Women Barristers Association (Vic.))

## Challenges faced by the legal profession — a “women’s issue?”

Whilst this report necessarily focuses on the challenges faced by women in the profession, it attempts to recognise that some of the issues raised also significantly affect men lawyers, and hence the profession as a whole. For example, issues of maternity leave and career progression are specific to women, but also raise the related issues of paternity leave and paternal responsibility for child-raising and care.

Further, it is acknowledged that not all women lawyers are partners/mothers and similarly, not all men lawyers are partners/fathers. In the context of this report, however, it is assumed that many women lawyers are or will become parents during their careers, and similarly, male lawyers will become fathers.

Much Australian and international research has demonstrated that there are very specific and largely universal consequences of being a woman in the workforce.<sup>6</sup> The lower pay, status and inferior career paths of women workers generally, is compounded and inextricably linked to the “double burden” of employment as well as family and caring responsibilities which many working women face.

<sup>5</sup> Hunter, Rosemary and Helen McKelvie, **Equality of Opportunity for Women at the Victorian Bar**, A Report commissioned and published by the Victorian Bar Council, July 1998.

<sup>6</sup> See, for example, Michael Bittman and Jocelyn Pixley (1997) **Working for Nothing: The double life of the family**, Allen and Unwin, St Leonards; Dalley, G (1996) **Ideologies of Caring** 2nd ed., Macmillan, London; Esping Andersen, G. (1994) “Equality and work in the post industrial life-cycle,” in Milliband, D., **Reinventing the Left**, Policy Press, Oxford; and Gornick, J C, Meyers, M K and Ross K E (1998) “Public Policies and the Employment of Mothers: A cross National Study,” **Social Science Quarterly**, vol. 79 (1) pp 323-27.



<sup>7</sup> Gatfield, Gill, **Without Prejudice: Women in the Law**, Brooker's Legal Information, Wellington, New Zealand, 1996, at p. xi. (emphasis added.)

<sup>8</sup> Victorian Women Lawyers Association, **Living and Working Together: Looking to the Future, Work Practices and Policies for Legal Firms**, 1998, at p. 16.

<sup>9</sup> *Ibid.*

# Definition of Sex Discrimination, Sexual Harassment and Gender Bias

This report acknowledges that addressing the challenges raised by working in a legal environment must be faced by *all* practitioners, male and female. However, such an approach must not obscure the reality and consequences that direct and indirect discrimination against women in the workforce has had upon their careers, conditions and progress.

The studies referred to in this report refer to the existence and impact of sex discrimination, sexual harassment and gender bias on women lawyers. These terms are not always defined in the studies. For the purposes of this report, the following brief definitions are offered:

## Sex Discrimination

As New Zealand author, Gill Gatfield, succinctly explains:

*“Unlawful sex discrimination occurs in a work context where one person (or a group of persons) has **less favourable** terms, conditions, opportunities and rewards than another person ...**by reason of their sex**. This may occur as a result of explicit prejudice or it may occur inadvertently”.*<sup>7</sup>

Discrimination on the basis of sex is illegal and covered by relevant state and federal legislation in Australia. Sex discrimination can be direct, indirect or systemic. Direct sex discrimination occurs where one person is explicitly favoured in their employment by reason of their sex, eg. only men will be hired, promoted or given prestigious work by a particular employer. Indirect discrimination occurs where the criteria laid down for a job has the indirect effect of discriminating against women eg. only employees who are available after-hours, on weekends, and have worked continuously and full-time for the firm will be considered for partnerships. Such a policy would indirectly discriminate against women, who are the most likely to have family responsibilities, have taken maternity leave or worked part-time. Systemic discrimination occurs when either direct or indirect discrimination has, over time, created a work culture and environment which systemically discriminates against one sex over another.

Indirect and systemic discrimination can be so subtle and culturally entrenched that they are often hard to detect and even harder to take action against.

## Sexual Harassment

Sexual harassment is also unlawful and can be defined as:

*“unwelcome conduct of a sexual nature which offends, humiliates or intimidates the person to whom it is directed.*

*It does not include consensual conduct occurring within a personal relationship of mutual attraction and/or friendship”.*<sup>8</sup>

Sexual harassment may involve a single incident or several incidents, be subtle or explicit, and may include:

- physical contact
- demands for sexual favours
- offensive or demeaning comments, jokes and innuendo
- unwanted sexual propositions or advances
- offensive gestures, staring or displaying offensive material and
- unwelcome remarks or insinuations about a person's sexual activities or private life.<sup>9</sup>

## Gender Bias

Gender bias refers to “individual instances of sex discrimination which conform to a consistent and clear-cut pattern.” “Gender” refers to “the natures of men and women, their roles within families, workplaces and societies, and the assumptions and stereotypes about men and women in those roles”.<sup>10</sup>

Hence:

*“Gender bias results where the assumptions and stereotypes, which may appear neutral or even positive, consistently carry an underlying negative meaning or produce a negative outcome for one sex and not the other.”*

*For example, the assumption that women are good at dealing with emotional issues appears positive but in practice it has been used to justify the unrelated assumption that women are not equipped to handle difficult business matters. Although men are subjected to the corresponding negative assumption that they are ill-equipped to deal with emotions, this rarely limits the work opportunities or benefits available to them”.<sup>11</sup>*

## Objectives of this Report

Given the ambitious range of issues this report attempts to address, it necessarily raises more questions than it answers, and as an “Issues Paper” is intended to:

- provide an overview of the issues involved to enable further discussion and the development of appropriate action plans and further activities;
- highlight main areas of consensus and common themes;
- indicate where there is an absence of data or material (and hence need for additional research); and
- provide suggestions for future strategies (which VWL and other groups can develop.)

## Outline of this Report

**Chapter One** - sets out the background, introduction, aim, key issues to be addressed and methodology of the project;

**Chapter Two** - provides a discussion of the six key issues focused on in this report, in light of recent relevant research, also indicating where there does not appear to be any or adequate data on these issues;

**Chapter Three** - gives a brief summary of some of the work which has been done in Australian states on women in the profession and balancing work and home life; and

**Chapter Four** - gives an overview and summary of common themes, and concludes the report with some suggestions for strategies for change and future research. It also contains the response of VWL to the findings of the research.

*Sources Consulted & Bibliography*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> The survey sample included female solicitors holding practising certificates in Victoria and NSW, excluding sole practitioners without employees; and male solicitors holding practising certificates in Victoria, excluding sole practitioners without employees (Herron, 1994, p.4)

<sup>13</sup> Herron, M., at p. vii.

<sup>14</sup> The scale ranged from: "Excellent" (5), "Very good" (4), "Good" (3), "Fair" (2) to "Poor" (1.) *ibid* at p. ix.

<sup>15</sup> *ibid*.

<sup>16</sup> Law Institute of Victoria, **Career Patterns of Law Graduates** (Jill Ewing, Lorraine Dennerstein, Carol Bartlett and John Hopper, c. 1993 [undated.]) This study compared 1000 male with 1000 female law graduates of similar graduating years.

<sup>17</sup> *ibid.*, p. 34 (emphasis added.)

<sup>18</sup> *ibid*.

# The Key Issues — An Overview

This chapter briefly considers each of six the key issues highlighted in Chapter One in light of the materials consulted. It is not intended to be a comprehensive summary of each report to which it refers, and readers are strongly urged to consult the original materials for a fuller context of the issues of most interest and relevance to them.

## Issue 1

*Highlight the main issues, which arise from the research in relation to why lawyers are dissatisfied with working in the legal profession.*

The main report directly addressing job satisfaction of lawyers is Victoria Law Foundation's **Facing the Future: Gender, Employment and Best Practice Issues for Law Firms** by Mark Herron, Annie Woodger & George Beaton, (1996.) Its key findings on overall satisfaction in private law firms were:<sup>12</sup>

- overall job satisfaction depends more on position in the firm than gender;
- principals and consultants were the most satisfied group by a significant margin;
- there was no significant difference between the overall job satisfaction of male and female employee solicitors; and
- the most satisfied group was female principals and consultants and the least satisfied group was female employees.<sup>13</sup>

Interestingly, in rating the corporate environment, respondents, excluding principals and consultants, gave the main "drivers" (factors which determine the quality of the corporate environment) a mean rating of less than "good" or below 3.0 on a the five point scale.<sup>14</sup> The mean overall corporate rating by men was 2.9 and by women, 2.7.<sup>15</sup> (The findings of this report are discussed in further detail under Issue 3, below.)

A study by the Law Institute of Victoria suggested that although male and female graduates were equally satisfied with their decision to do law, a greater proportion of female graduates were dissatisfied with the progression of their careers (16% v. 11%).<sup>16</sup> It should be noted that the LIV report was measuring satisfaction on a different indicator to the VLF, that is, satisfaction in the decision to do law compared with the VLF's study on satisfaction as expressed through key indicators in the work place.

Another significant difference between the two studies is that the LIV study also compared graduates who had *discontinued* working in legal practice, which the VLF study did not do. These responses may be indicative of why lawyers are *dissatisfied* with their careers. Graduates who were no longer working in legal practice were asked to indicate how important a number of factors had been in their decision to discontinue legal practice. Although the greatest proportion of both female and male graduates said that a consideration of "personal lifestyle" was important in their decision to discontinue practice (76% and 63%), the report notes that "there were a number of *significant differences*" in the female and male responses.<sup>17</sup> Significantly more female ex-practitioners than males said "family commitments" (65% cf. 32% for males) and consideration of their "partner's career commitments" (26% cf. 7% for males) were highly significant factors in their decision.<sup>18</sup> Male graduates were more likely than females to cite "level of remuneration" as a significant reason for leaving practice (52% cf. 29% for females.) Similar numbers of female and male ex-practitioners gave "lack of satisfaction" as a reason for leaving (59% and 63% for males.)

The NSW Keys Young Report, the Tasmanian Report<sup>19</sup> and the Western Australian study<sup>20</sup> did not directly assess the “satisfaction” of female versus male employees, as they focussed more on the profile of women in the profession, all finding that gender bias had inhibited the career progression of women in the legal profession in those jurisdictions. In addition, these reports adopted an approach of investigating what “barriers to success” women might be facing, which were not experienced by their male colleagues.

The recent report on **Equality of Opportunity for Women at the Victorian Bar** by Rosemary Hunter and Helen McKelvie examined both the career aspirations and satisfaction with the position/progress of female and male barristers and the “barriers to success” barristers perceived.<sup>21</sup> The authors found that “the majority of both female and male barristers interviewed indicated that they were satisfied with their current position or with current progress towards their goals.” They noted, however, that fewer women than men expressed satisfaction with their current progress, and more women were either equivocal or unsatisfied. Similar to the LIV’s data on the different reasons women gave for leaving the profession, the Bar survey noted that although “over a third of both women and men saw no barriers to the achievement of their aspirations...[b]eyond that, women and men *diverged remarkably* in the kind and number of barriers they perceived”.<sup>22</sup> Among the multiple factors cited as barriers by women barristers were gender-related barriers, such as solicitors’ reluctance to brief women and family responsibilities.<sup>23</sup>

## Issue 2

*Highlight any links between dissatisfaction and turnover and productivity.*

A recent study by the VLF estimated that when a fourth year solicitor leaves a large law firm and is replaced, the cost to the firm is roughly \$145,000. (This represents costs incurred by the firm and revenue forgone.) The equivalent costs for a medium firm is approximately \$71,600 and for a small firm, approximately \$61,400.<sup>24</sup> Earlier studies by the VLF have indicated a strong link between the dissatisfaction of solicitors with the legal firm environment and an intention to leave the firm. A number of studies have shown that around 30% of solicitors (employees and senior associates) in private firms intend to leave.<sup>25</sup>

The VLF has produced a simple Excel spreadsheet template which is designed to allow small, medium and large firms to accurately estimate revenue lost as well as cost expended as a result of turnover.<sup>26</sup> The spreadsheet was based upon a ‘costs of turnover matrix’ devised in 1991 by a US Professor of Management, Wayne Cascio. The VLF study then adapted the matrix for the Australian legal profession by drawing on the input of 17 firms, including conducting focus groups and asking human resources managers and finance managers from the firms to reflect on the process of a solicitor leaving.<sup>27</sup>

Key results from the study were that:

- the cost to a firm of replacing an established solicitor is in excess of the solicitor’s annual salary
- revenue forgone by the firm as a result of the turnover incident accounts for over half the turnover costs in large and medium firms; for small firms it is slightly less than half the total turnover costs
- positions typically remain vacant for five to 12 weeks, during which time firms typically recover only 50% of the solicitor’s normal budget by allocating work to other members of the work group

<sup>19</sup> Goodluck, Jane, **Women Working in the Legal Profession in Tasmania: Final Report**, Prepared for the Women Lawyers Association of Tasmania by Ireland and Goodluck Corporate Consultants, December 1996.

<sup>20</sup> Malcolm, The Hon. Mr Justice D K, Chief Justice of Western Australia, **Report of the Chief Justice’s Taskforce on Gender Bias**, 30 June 1994.

<sup>21</sup> Hunter, Rosemary and Helen McKelvie, **Equality of Opportunity for Women at the Victorian Bar**, A Report commissioned and published by the Victorian Bar Council, July 1998, at pp. 26 - 27.

<sup>22</sup> *Ibid* (emphasis added.)

<sup>23</sup> *Ibid*.

<sup>24</sup> Woodger, Annie, “The cost of turnover in law firms,” **Law Institute Journal** (Victoria), May 1998, pp. 34 - 36. See also Beaton-Wells, Michael, “Implications of the invisible costs of solicitor turnover,” **Law Institute Journal** (Victoria), May 1998, pp. 37 - 39.

<sup>25</sup> VLF, 1996 **Career Intentions Survey** - 32% intended to leave; VLF, 1996 **Facing the Future Study** - 28% of male and 27% of female solicitors intended to leave private practice within 12 months; LIV 1990 **Career Patterns of Law Graduates** found that 32% of non-partners/consultants in firms of ten or less partners intended to find a new position within 12 months (21% in larger firms.) [Cited in Annie Woodger, **LJ**, *op.cit.*, May 1998, at p. 34.]

<sup>26</sup> The template is available to firms free of charge by email from the VLF, [aaniew@vlf.asn.au](mailto:aaniew@vlf.asn.au). It can be mailed on disk for \$10.

<sup>27</sup> Woodger, 1998, *op.cit.* at p. 35.

<sup>28</sup> *Ibid.*, at pp.35 - 36.

<sup>29</sup> Beaton-Wells, Michael, "Implications of the invisible costs of solicitor turnover," *Law Institute Journal* (Victoria), May 1998, at p. 37.

<sup>30</sup> *Ibid.*

<sup>31</sup> The reports referred to here are: **Submission of the Gender Equity Forum to the ACT Law Society Council**, 1995; Gatfield, Gill, **Without Prejudice: Women in the Law**, Brooker's Legal Information, Wellington, New Zealand, 1996; Goodluck, Jane, **Women Working in the Legal Profession in Tasmania: Final Report**, Prepared for the Women Lawyers Association of Tasmania by Ireland and Goodluck Corporate Consultants, December 1996; Hunter, Rosemary and Helen McKelvie, **Equality of Opportunity for Women at the Victorian Bar**, A Report commissioned and published by the Victorian Bar Council, July 1998; Keys Young, **Research on Gender Bias and Women Working in the Legal System**: Report Prepared for NSW Department for Women, 6 March 1995; Law Institute of Victoria, **Career Patterns of Law Graduates** (Jill Ewing, Lorraine Dennerstein, Carol Bartlett and John Hopper, c. 1993/1994? undated); and Malcolm, The Hon. Mr Justice D K, Chief Justice of Western Australia, **Report of the Chief Justice's Taskforce on Gender Bias**, 30 June 1994.

<sup>32</sup> Victoria Law Foundation, **Facing the Future: Gender, Employment and Best Practice Issues for Law Firms**. (Mark Herron, Annie Woodger & George Beaton, 1996.)

<sup>33</sup> Goodluck, Jane, **Women Working in the Legal Profession in Tasmania: Final Report**, Prepared for the Women Lawyers Association of Tasmania by Ireland and Goodluck Corporate Consultants, December 1996, at p. 1.

<sup>34</sup> *Ibid.*

<sup>35</sup> Defined as "one or more periods outside the work force, or working on a part time or casual basis. (*ibid.*, p. 2.)

<sup>36</sup> *Ibid.* at p. 2.

- these estimates are conservative, and do not include the costs of low staff morale in times of high turnover, which can lead to further staff loss, clients following a solicitor to another firm or client dissatisfaction with the number of solicitors who have worked on their matter.<sup>28</sup>

In another recent article, Michael Beaton-Wells points out that firms' failure to measure and appreciate the extent of the cost of solicitor dissatisfaction and consequent turnover, has "serious client-related and economic implications for legal practices in the nineties and beyond."<sup>29</sup> Highlighting the financial burden of staff turnover to a firm, one city firm used the cost of \$100,000 per fourth year turnover incident, multiplied it by the number of senior solicitors who had left in the past year, and arrived at a figure roughly equal to the firm's annual total profit.<sup>30</sup>

These recent studies highlight that the financial implications to firms (and indeed all legal employers) of any legal staff leaving are significant, and that serious consideration should be given to addressing the reasons why so many solicitors are leaving.

## Issue 3

*Highlight any gender or age related issues.*

All of the major reports on women in the profession examined<sup>31</sup>, except for the VLF 1996 study<sup>32</sup>, concluded that gender bias existed in the profession and had a significant impact on women's career progression in the law. No reports addressed age directly or in detail, other than to discuss the fact that women of relevant experience (and so presumably, of a particular age) were under-represented at various levels of the profession.

## Statistical Profile of Women in the Law

The Tasmanian report, for example, concluded that their data indicated that: "gender bias inhibits the career advancement of women in the legal profession in Tasmania."<sup>33</sup> Echoed in the NSW Keys Young Report, the WA Report, ACT data and the LIV study, were the findings that:

*"There is clear evidence of a disparity between graduation rates and the levels of seniority achieved by women in private legal practice in Tasmania.*

*Compared with rates of graduation over time, women are under-represented among practising lawyers. This suggests a high attrition rate for women compared with men.*

*Women are seriously under-represented at principal level in private practice, even taking into account historically low rates of entry into the profession by women and the necessary time lag between graduation and the achievement of principal level."<sup>34</sup>*

The Tasmanian Report found that:

- "Career interruptions<sup>35</sup>," which most often resulted from women's family responsibilities, were a major barrier to their advancement to principal level in Tasmanian law firms;
- That women who did not have "career interruptions" were more likely to have reached principal level in Tasmanian law firms; and
- Women are more likely to become principals by establishing their own practice rather than becoming a partner in an established law firm.<sup>36</sup>

Some of the respondents of the NSW Keys Young report suggested that the reasons for women's lower status in the profession are many, but include:

- the historical legacy of the lower number of women entering the profession;
- the demanding nature of much legal practice, making it difficult to reconcile with family responsibilities; and
- women lawyers' priorities and choices about career and family.<sup>37</sup>

The authors of the NSW Report found, however, that when they compared female and male lawyers admitted to practice *in the same years*, that three, five and ten years post-admission, women lawyers had attained partnership at a considerably lower rate than that of their male counterparts. They concluded that "[t]his finding casts *considerable doubt* on the theory that *sufficient numbers and time* will eventually bring about *equity* in women's and men's status in private law firms."<sup>38</sup>

The LIV report also found that the career paths of male and female graduates diverge dramatically within only five years of graduation, and note that "for a number of reasons, women elect not to continue, or even to start practising in the private profession."<sup>39</sup> Further, that of those lawyers who do enter partnerships in the first five years of practice, 11% are women and 89% are men. The LIV found that overall, women hold only 12% of all full practising certificates (those held by partners/ sole practitioners), despite the fact that they comprise 39% of lawyers in the relevant experience bracket.<sup>40</sup> The data poses the question of why, when females are nearly 50% of law graduates, and at the time of writing the report, at least that percentage in admissions, are they only 39% of younger practitioners in private practice? (This then drops to 23% of the profession overall, and 12% of partners.)

The LIV report also found significant differences between male and female graduates in the impact that having children had on their careers. Whilst the three top reasons for career interruption overall were travel (24%), the birth of a child (18%) and child-care (12%); when examined against gender, apart from travel (cited by 28% of females and 21% of males), a striking difference between men and women is evident. Not surprisingly, birth of a child was cited as an interruption by 35% of females (cf. 1 % of males) and child care was cited by 24% of females (cf. 1 % of males.) Women were also twice as likely to interrupt their career by undertaking post-graduate study (10% cf. 5% of males).<sup>41</sup>

Once children were born, female graduates were much more likely than male graduates to be "very involved" in their care (94% cf. 22% of males.) The flip-side of this picture is also very revealing: male graduates were much more likely to have a partner who had "higher involvement" in the care of their children (97% cf. 20% of females).<sup>42</sup>

Flowing on from this, women (22%) were significantly more likely than men (9%) to report having made major use of child-care facilities. Conversely, males were significantly less likely to use child-care facilities at all, with 67% of men (cf. 43% of females) stating that their children were not cared for at child-care facilities during their preschool years.

The LIV report concluded that there were "a number of statistically significant differences in the workforce participation of male and female graduates." Compared to their male counterparts, female graduates were **less likely** to:

- be defined as being in legal practice;
- be holding a practising certificate (if they held one, it was more likely to be an employee, corporate or non-practising certificate);
- be currently working in a position of an essentially legal nature;

<sup>37</sup> Keys Young Report, *op.cit.* at p. ii.

<sup>38</sup> *Ibid.*, at p. i.

<sup>39</sup> LIV 1993/94 study, *op.cit.* at p. 2.

<sup>40</sup> *Ibid.*, at p. 3.

<sup>41</sup> LIV Survey Report of Legal Practitioners 1993/94, p. 38.

<sup>42</sup> Law Institute of Victoria, **LIV Survey Report of Legal Practitioners** January 1999, (Roy Kreigler, January 1999) approximately 35% of solicitors holding practising certificates are female. There is a consistent market pattern, the older the practitioner the greater the likelihood that they are male. Only 13.8% of male respondents were under the age of 30 years compared with 34.5% of females, p. 3.

<sup>43</sup> LIV 1999 Survey Report, female respondents were more likely to work part-time hours and less likely than male respondents to work very long hours. Female earnings were, on average, significantly lower than male earnings, at p. 5.

<sup>44</sup> Keys Young p. i.

<sup>45</sup> Keys Young p. i.

<sup>46</sup> Malcolm, The Hon. Mr Justice D K, Chief Justice of Western Australia, **Report of the Chief Justice's Taskforce on Gender Bias**, 30 June 1994, at pp. 82 – 85.

<sup>47</sup> Keys Young, *Ibid*, at p. 39.

<sup>48</sup> Beaton-Wells, *Ibid*, p.37

<sup>49</sup> Note increasing management literature on businesses of the future requiring strategies which incorporate "Managing Diversity." (Reported widely, but discussed at recent seminar:

**"Working Women in the New Millennium:** the role of women in the workplace leading up to Y2K and beyond," Speakers: Mary Delahunty, MP, Meredith Hellicar, CEO, CCW and Elizabeth McCallum, Partner, CCW, Corrs Women in Business Seminar, Melbourne, 21 October, 1998.)

<sup>50</sup> Also relevant to Issue 5.

- be practising as barristers or as partners in private legal practice;
- be spending the greatest amount of their time practising in business law, criminal law or civil litigation;
- have decided their ultimate career aspiration; and
- earn incomes in excess of \$50,000.<sup>43</sup>

If women are not in the prestigious parts of the profession, then where are they? The NSW Keys Young Report found that women lawyers now hold:

- the majority of legal positions in the community sector (60%);
- a substantial and growing number of legal positions in government (41%);
- a substantial and increasing number in legal academia (39%); and
- a significant proportion of the corporate sector (38%).<sup>44</sup>

In NSW, however, similar statistics to Victoria and other Australian states exist on the proportion of women in private law firms (23%), at the Bar (10%) and the judiciary (8%). The NSW report reflected the findings of the LIV study that women were disproportionately represented in the lower positions within private law firms, government, academia, the Bar and the judiciary. It noted that the "discrepancy between the numbers working in each area and the numbers holding senior positions is especially marked in private law firms and at the Bar."<sup>45</sup>

The WA Report also commented on gender bias in the Offices of the Director of Public Prosecutions and the Crown Solicitor. It found that in both offices complaints of gender bias in the allocation of work, promotion and reclassification existed. It noted, however, that it was "rare for specific complaints to be made in any formal way, because the structure of both offices allows ample scope for retaliation and victimisation." The report stated that it was not clear how far gender bias in those areas does exist in each office." The DPP had established an Equal Opportunity Committee and identified part-time work and work allocation as issues of general concern.<sup>46</sup>

## Barriers to Gender Equity in the legal profession

Various forms of gender bias were identified by the reports, and reflect the presence of direct, indirect and systemic discrimination and sexual harassment in the legal profession.

### Costs and consequences of gender barriers in the legal profession

The under-representation of women in the profession, particularly in its more senior levels, was seen as having a number of consequences for clients, women lawyers, the profession and also possibly, for the way law is practised.<sup>47</sup>

Major consequences identified by the Keys Young report include:

- a waste of time and resources devoted to legal training<sup>48</sup>
- a lack of "vigour" and diversity in the profession<sup>49</sup>
- a "rigidity" of structure" in the management of collegiate relations
- a loss of talent
- a lack of alternative models of service delivery<sup>50</sup>
- a lack of role models for women lawyers
- a lack of female mentors
- a lack of established networks for women lawyers and barristers

- a lack of “critical mass” of women necessary to make it easier for women in the low ranks of the profession and to change the legal corporate culture
- law firms and legal practice are still structured in a way that suits men rather than women.<sup>51</sup>

### VLF Facing the Future: Job Satisfaction Study (1996) - Comments<sup>52</sup>

This was the only report examined which did not find that discrimination against women existed in the profession, and therefore warrants some discussion. It concluded that:

“...As a matter of strict scientific analysis, the results demonstrate conclusively *neither the presence nor absence of discrimination* whether direct, indirect or systemic. Moreover, it is important to remember that the survey data have no historical dimension - they reflect the present, not the past.”

To be fair, however, if discrimination were as pervasive and as detrimental to women’s careers as many people think, we would expect to find big differences between the satisfaction levels of men and women on things like remuneration, rates of promotion and career advancement, personal support provided by the firm and the balance between private and professional life. Similarly, big differences should show up somewhere in the ratings of the corporate environment, in things like the appropriate use of status, position and power, values espoused by the firm or quality of internal communications. All these things influence how people rate their job satisfaction and the quality of the corporate environments. In all these things women and men have far more in common than they have differences. At best then, the prevailing causal explanation of ‘discrimination against women’ provides a limited account of what is happening in law firms.”<sup>53</sup>

However, it noted that “the resulting differences in *experience of the workplace* are open to the *interpretation* of discrimination.”<sup>54</sup>

The VLF Report found that:

- The similarities between the responses of men and women strongly outweigh the differences
- The differences found were consistent with the propositions that:
  - Women are more concerned with maintaining a *balanced life* in which work, career and other factors have proportionate weight.
  - Women tend to have a *more critical view* of components of job satisfaction and of the corporate environment.
- The findings suggested that discrimination against women provided only a limited account of what was happening in law firms, and the report’s author suggested that an alternative to the “discrimination” model of law firm organisation, could be seen in the following way:
  1. Job satisfaction (what the VLF project was measuring) gave an “excellent account” of why people left or stayed in their jobs. “At many law firms, the corporate environment and practices in human resources management are **adverse to job satisfaction because they do not adequately provide for the human needs of employees.**”
  2. Women, more concerned with maintaining balanced lives, will not pursue success at any cost and are less likely to tolerate these conditions.
  3. Men, for whom jobs are more central in their lives, are more driven to “succeed” and more prepared to put up with such conditions.
  4. (As noted above:) The resulting differences in experience of the workplace are **open to the interpretation of discrimination.**<sup>55</sup>

<sup>51</sup> Although note results of recent research that young male lawyers are increasingly dissatisfied in the private legal profession. This suggests that private firm culture, and legal culture in general, is no longer serving the interests of young and relatively inexperienced male lawyers either. (See VLF (1996) and VLF (1998.))

<sup>52</sup> These comments concern Volume 1 of the report, The Job Satisfaction Study, by Mark Herron, in Victoria Law Foundation, **Facing the Future: Gender, Employment and Best Practice Issues for Law Firms.** (Mark Herron, Annie Woodger & George Beaton, c. 1996.

<sup>53</sup> Victoria Law Foundation, c. 1996, at p. 16 (emphasis added.)

<sup>54</sup> VLF 1996 at p. xii.



<sup>55</sup> VLF 1996 at p. xii.

<sup>56</sup> VLF 1996 at p. 1.

<sup>57</sup> VLF 1996 at p. 1.

The following comments can be made:

- This study set out to “determine the nature, extent and causes of job satisfaction and dissatisfaction among solicitors and to identify any gender specific issues and problems.” The author states that the project “was conceived as an *organisation* study of private law firms, one intended to produce practical outcomes based on a sophisticated and objective analysis of sound empirical data.”<sup>56</sup>
- Critically, the author states that the project “was *not intended as a contribution to the debate about under representation of women in senior positions in the legal sector.*”<sup>57</sup>
- Stating that women:
  - are more concerned with maintaining a balanced life;
  - tend to have a *more critical view* of components of job satisfaction and of the corporate environment; and
  - will not pursue success at any cost and are less likely to tolerate these conditions

raises, of course, a whole plethora of questions about why this may be so, and what the implications of these “tendencies” of women are for the likelihood of their success in the firm environment.

Such unresolved questions include:

- Why are women more concerned with “balance” between work and home?
- Why do they have a more critical view of the corporate environment?
- Why do they not pursue success at any cost?
- Does “less likely to tolerate these conditions” mean that they leave firms?
- Do women have a real *choice* about balance between work and family commitments?
- Given the data that most women take the prime responsibilities for their children, is it really possible for them to pursue success at any cost?

Issues raised by the Survey Instrument itself include:

- An emphasis on the “corporate environment”, rather than discrimination specifically, may have meant that respondents were reflecting more upon general management issues which may lead to employee dissatisfaction, rather than wider direct, indirect and systemic discrimination. For example, the question on “Recognition/ accommodation of need to balance professional and private lives” contains one indicator on “accommodation of your family care responsibilities.” The question is otherwise cast in more general terms of “long hours of work required,” “billable hours and budget demands,” “deadline requirements, interstate travel and other stressful work circumstances,” etc. It is perhaps not surprising to then find that men and women see these factors similarly: that is, that private firms are a very gruelling environment, and demand heavily of their male and female employees’ private lives. **The survey seems to indicate, in fact, that female and male are equally *dissatisfied* with the private firm environment.** This supports the comments made at the beginning of the present report that the culture and environment of most private law firms is not currently conducive to the needs of male *or* female employees.

- However, what the survey perhaps did not seek to discover was how the **demand on private lives has a “double” impact upon women**: that is, they are subject to the same rigours of the workplace as their male colleagues, may also be subject to discrimination, directly, indirectly or systemically, whilst at the same time, often assuming prime responsibility for the needs of their children and family. This is not to say that male lawyers would not like more time with their families, but that their responsibility on the domestic scene is often dramatically different to that of their female colleagues (as the LIV data discussed above shows.) Hence, the influence of demands of family life on women lawyers’ careers compared to men’s is generally not the same.
- It is acknowledged that the VLF study and the other studies reviewed in the present report have used different methodologies in gathering their data. Whilst there is not scope here to debate the merits or otherwise of varying approaches, it is accepted that different methodological approaches may yield different results. For example, a survey instrument which directly asks detailed questions about perceptions or experiences of discrimination, including availability of child care support, flexible work options and how this may affect female lawyers (as most of the other studies did), may yield different results to one which asks only a few questions directly about discrimination, and otherwise sets such questions in a more general context of satisfaction with the corporate environment, management and “balancing professional and private lives” (as the VLF study did.)

## Issue 4

*Consider alternative structures for legal firms ie. part-time partnership, alternative lateral career paths to partnership eg. senior counsel, consultant.*

Of the materials examined, only the VLF 1996 Report, **Volume II: Meeting human needs: A guide to Effective Practices in Law Firms**, considered these issues to any extent. The reason for their discussion in this report is that firstly, alternative structures suggest flexibility and willingness of a firm generally to acknowledge the various skills and interests of its employees (apart from their capacity as profit-generating centres); and secondly, it is widely considered that such alternatives may provide more opportunity for women, whose careers are more likely to be interrupted by raising children, to meet the criteria for promotion when the criteria are wider than years of full time service and profit generated.

It should be noted, however, that as the VLF report notes, (and is further discussed under Issue 5: Alternative styles of work, below), such novel positions should not involve merely the creation of “new titles.” Contrary to being viewed as “the mummy track” or some form of second-class partnership, which would serve to further marginalise women in firms, such appointments must be publicly and genuinely supported by the firm as an acknowledgment of the valued skills, knowledge and expertise that particular staff can provide.

The VLF report<sup>58</sup> suggests that the development of diverse career paths is related to enhancing solicitors’ satisfaction. It notes that:

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

*Creating new titles is not enough. The firm needs to create a culture which recognises success in forms other than partnership. Alternative career paths are not there for those who have not or can not make it.’ They should reflect the diversity of ambition within the firm”.<sup>59</sup>*

<sup>58</sup> Volume II: Meeting human needs: A guide to Effective Practices in Law Firms, by Annie Woodger and Dr George Beaton, in Victoria Law Foundation, **Facing the Future: Gender, Employment and Best Practice Issues for Law Firms**. (Mark Herron, Annie Woodger & George Beaton, c. 1996)

<sup>59</sup> *Ibid.*, at p. 27.

<sup>60</sup> *Ibid.* at pp. 27 - 28.

<sup>61</sup> That is, the studies from Victoria (LIV c. 1993/94), NSW (Keys Young Report), WA, Tasmania and New Zealand noted earlier. In addition, the report prepared by Rosemary Hunter and Helen McKelvie for the Victorian Bar Council contains substantial recommendations aimed at making the Bar more supportive of women who have family responsibilities (see Recommendations 25 - 28, at pp. Xvi - xvii.)

<sup>62</sup> Volume II in VLF, 1996, *op. cit.* at p. 34.

<sup>63</sup> For another clear discussion and explanation of flexible job practices see also **VLF Volume II**, at pp. 34 - 40, which includes comments from lawyers interviewed who have successfully incorporated such practices into their work.

Some alternative career paths suggested include:

- *Salaried partners*: although it is acknowledged that this option reasserts the partnership model and can create a hierarchy within the partnership.
- *Part-time partners*: this model, too, is still a form of partnership, but at least offers some flexibility.
- *Special counsel*: recognises the solicitor's high professional standing and expertise
- *Mentor*: position formally recognises the time-consuming educative role played by some experienced practitioners
- *Legal Manager*: recognises the need for legally-trained managers to become involved with firm administration, such as in the areas of human resources, management and marketing.
- *Legal co-ordinator*: are recognised for their organisational and people skills and can be effectively used to run large projects with different work groups, complex technology and technical documentation.<sup>60</sup>

## Issue 5

### *Alternative styles of work, concentration on certain areas of practice.*

All of the specific reports consulted on women in the legal profession<sup>61</sup> considered that the adoption of flexible work practices was critical to the increased participation of women in the legal workplace. Whilst not singling out women in particular, the VLF's Effective Work Practices Guide notes that the "range of life choices available to the modern legal profession has increased the need for flexible work practices," and that:

*"Whether people need more time for family, company directorships, study, commuting, public duties or themselves, the impact on the firm is the same. Flexible work practices are no longer perks for exceptional practitioners - they are necessary to **optimise human resource management and firm performance.**"<sup>62</sup>*

"Flexible work practices" refers to a range of work place policies, whose main objective is to meet employees' individual needs by going beyond the traditional work model of full-time hours worked at the office on set days.

The most practical and accessible document reviewed for this study is the Victorian Women Lawyers recently published guidelines, **Living and Working Together: Looking to the Future, Work Practices and Policies for Legal Firms** (1998), which readers are strongly urged to consult.<sup>63</sup> It is set out in a simple, brief and accessible format as Guidelines which are drafted for ease of incorporation into firms' existing work practices and policies.

They are specifically referred to here as they provide a succinct summary, as well as a practical application, of the many types of flexible work practices raised in the other reports.

Hence, issues raised include:

- **Types of Leave** - which could be offered to employees (eg. annual, sick, carers', compassionate, study and examination; special; leave without pay; parental (including paid maternity leave) and long service);
- **Working Part-time** - and its implications (eg. issues of job sharing; part-time work after parental leave; the use of part-time offices; and part-time and salaried employees); and

- **Other Flexible Work Arrangements** - covering issues such as scheduling of meetings, training and client functions; flexible working hours; working from home and career advancement.

The issue of working from home raises some complex issues, including:

- **Occupational Health and Safety Issues** - compliance with legislative requirements;
- **Technological and Administrative Support** - consideration must be given to the complete support, technologically (workstation, computers, fax, modem, phone) and administratively (access to secretary, paralegal, couriers and other administrative support); and
- **Personal and Professional Support** - to ensure that employees working from home are kept in touch with the firm, whether through telephone contact, email updates, publications or spending regular time in the office. It is paramount that such employees are also provided the same training and promotions opportunities as those working from the office.

However, even with all the goodwill in the world, and assuming that employees are given a genuine 'choice' about whether or not to work from home, there are some risks associated with such a strategy, particularly for women. These include:

- That being 'out-of-sight' will mean being 'out-of-mind' when the time comes for consideration of promotions or prestigious assignments/secondments;
- Being effectively removed from the networking which takes place within the office, with both colleagues and clients, may actually increase the marginalisation of women by creating legal outworkers 'ghettos'. As Professor Margaret Thornton notes:

*'Modern office technology ... enables some women practitioners to work at home. The danger is that their lack of bodily presence will automatically transfer them to a subordinate substratum, like permanent associates, where they are forever excluded from policy-formulation...'*

*Outwork may also satisfy the out-of-sight, out-of-mind approach preferred by the legal profession, rather than **confronting the reality** of maternity and child care'.<sup>64</sup>*

Professor Thornton warns that whilst 'greater work flexibility in work, including part-time and outwork, provide acceptable short-term solutions for individual women, they operate to maintain the status quo', and in particular the dichotomy between the public (predominantly male) sphere and the private (female) sphere.<sup>65</sup>

The UK legal profession will soon be forced to consider part-time and other flexible and 'family-friendly' policies under legislation foreshadowed by the UK Government. This reflects the UK Government's commitment to, and obligation to implement, the European Union's **Part Time Working Directive**, which will force all EEU employers to review their working practices.<sup>66</sup>

(In terms of concentration on certain areas of practice, see general discussion under Issue 3. The key areas in which women are concentrated in the law are in the corporate, government, academic and community sector; and within private practice are least likely to be practising in business law, criminal law and civil litigation).

<sup>64</sup> Thornton, Margaret, **Dissonance and Distrust: Women in the Legal Profession**, Oxford University Press, Melbourne, 1996, at p. 246 (emphasis added.)

<sup>65</sup> *Ibid.*

<sup>66</sup> Keeble, Sarah, "Part-time tide waits for no firm," **The Lawyer** (UK), 17 November, 1998 at p. 10.

<sup>67</sup> Heskett, J.L., Jones, T.O., Loveman, G.W., Sasser, W.E. and Schlesinger, L.A. (1994) Putting the Service Profit Chain to Work, **Harvard Business Review**, March-April, pp. 164-174, cited in *ibid.*, at p. 1.

<sup>68</sup> Beaton, M. R. (1995) **The Role Of Quality, Value And Structural Factors On Exit, Voice, Loyalty And Neglect In The Relationship Between Law Firms And Corporate Clients**, Ph. D. Thesis, University of Melbourne.

<sup>69</sup> Volume 1 : The Job Satisfaction Study, by Mark Herron, in Victoria Law Foundation, **Facing the Future: Gender, Employment and Best Practice Issues for Law Firms**. (Mark Herron, Annie Woodger & George Beaton, c. 1996.

## Issue 6

*Highlight data or analysis on measurements of productivity in relation to budgets and hours of work.*

No detailed analysis of these issues was contained in the reports examined (see Chapter 4: Some suggestions for future research.)

The VLF Effective Practices Guide however, noted the Harvard University research which established links between the “satisfaction, loyalty and productivity of employees, customer loyalty and profitability.”<sup>67</sup> Such relationships are described as the “service profit chain.” The Guide also noted that recent University of Melbourne research<sup>68</sup> and the VLF’s Job Satisfaction Study<sup>69</sup> demonstrated different parts of the legal firm service profit chain.

# Australia: Research regarding women lawyers

This table represents some of the other work that has been undertaken on the position of women in the legal profession throughout Australia. The work has been instigated or commissioned by a variety of groups: Women Lawyers' Associations, Law Societies, Government and Judicial committees. It is not intended to be comprehensive, but merely indicates some of the projects and initiatives of which the author is aware.

State	Recent Reports	Action Taken
ACT	<ul style="list-style-type: none"> <li>ACT Women's Forum Child care Report (Jan. 1995)</li> <li>ACT Women's Forum Submission to ACT Law Society Council</li> </ul>	<ul style="list-style-type: none"> <li>Law Society of ACT resolved to amend Guide to Professional Conduct and Etiquette re: Gender Issues (covering discrimination on basis of gender, family responsibilities, pregnancy or potential pregnancy; use of sexist language);</li> <li>Gender Equality Committee established (July 1995)</li> <li>Issues considered include: child care issues for women lawyers, position and treatment of women generally in the profession and amendments to Professional Guidelines.</li> </ul>
NSW	<ul style="list-style-type: none"> <li>Keys Young, <b>Research on Gender Bias and Women Working in the Legal System</b>: Report Prepared for NSW Department for Women (6 March 1995.)</li> <li>NSW Department for Women, <b>Response to Gender Bias and the Law: Women Working in the Legal Profession in NSW</b> (October 1995.)</li> <li>NSW Attorney General's Department and NSW Department for Women, <b>Gender Bias and the Law: Women Working in the Legal Profession</b>, Report of the Implementation Committee (October 1996.)</li> </ul>	<ul style="list-style-type: none"> <li>Wide variety of recommendations have been considered and implemented, involving the Law Society of NSW, the NSW Bar Association, the Affirmative Action Agency, HREOC, Anti-Discrimination Board, Office of the Director of Equal Opportunity in Public Employment, State Government, Law School and the Community Legal Sector.</li> <li>Separate permanent sub-committees established on Government, Statutory Issues and Attitudes/ Legal Education.</li> <li>Issues addressed have included: experiences of legally qualified women in the public sector, government briefing practices, judicial appointments, gaps in anti-discrimination practice, sexual harassment guidelines and procedure, contracts compliance, and mandatory EEO in CLE programs.</li> </ul> <p><b>* Awaiting Further Implementation Report.</b></p>
Northern Territory	<ul style="list-style-type: none"> <li>Not known</li> </ul>	<ul style="list-style-type: none"> <li>It is understood that the Northern Territory Women Lawyers Association is considering the way in which it will examine the position of women in the profession in the NT.</li> </ul>
Queensland	<ul style="list-style-type: none"> <li>Not known</li> </ul>	<ul style="list-style-type: none"> <li>Queensland Law Society's Equity Committee established the inaugural Flexible Work Practices Award in 1998, open to all members of the Qld legal profession. Award to recognise the legal organisations that have successfully implemented such practices;</li> <li>Study commenced in late 1998 by Queensland Anti-Discrimination Commission (details not known.)</li> </ul>
SA	<ul style="list-style-type: none"> <li>Not known</li> </ul>	<ul style="list-style-type: none"> <li>Not known</li> </ul>
Tasmania	<ul style="list-style-type: none"> <li>Goodluck, Jane, <b>Women Working in the Legal Profession in Tasmania: Final Report</b>, Prepared for the Women Lawyers Association of Tasmania by Ireland and Goodluck Corporate Consultants (December 1996.)</li> <li>Law Institute of Victoria, <b>Career Patterns of Law Graduates</b> (Carol Bartlett, c. 1994.)</li> </ul>	<ul style="list-style-type: none"> <li>Working Party set up following publication of the Report, including representatives from the Tasmanian Law Society, the Women Lawyers Assoc. of Tasmania, Dept. of Justice and Office of Status of Women.</li> <li>Implementation Report produced by Working Party.</li> <li>Adoption of recommendations of Goodluck report including: establishment of permanent Law Society Committee considering these issues; development of policy by Law Society on sexual discrimination, sexual harassment and flexible work practices.</li> </ul>

State	Recent Reports	Action Taken
Victoria	<ul style="list-style-type: none"> <li>• Law Institute of Victoria, <b>Child Care Feasibility Study Final Report</b> (Work and Child Care Advisory Service Victoria, March 1995)</li> <li>• LIV/ Young Lawyers/ Women in the Legal Profession Working Party: <b>Work Practices Guidelines</b> (including recommendations on types of leave, flexible work practices, and sexual harassment and sexual discrimination procedures.) (<i>March, 1995</i>)</li> <li>• Victoria Law Foundation, <b>Facing the Future: Gender, Employment and Best Practice Issues for Law Firms.</b> (Mark Herron, Annie Woodger &amp; George Beaton, 1996)</li> <li>• Victoria Law Foundation, <b>A Ticket to Where? Legal Education, practical training and employment,</b> Final Report. (Mark Herron, 1998)</li> <li>• Hunter, R &amp; McKelvie, H., <b>Equality of Opportunity for Women at the Victorian Bar</b></li> <li>• Victorian Bar Council, <b>Equality of Opportunity for Women at the Victorian Bar: Recommendations of the Working Party adopted by the Victorian Bar Council,</b> October 1998.</li> <li>• VWLA, <b>Living and Working Together: Work Practices and Policies for Legal Firms,</b> 1998.</li> <li>• Law Institute of Victoria, <b>LIV Survey Report Annual Survey of Legal Practitioners January 1999</b> (Roy Kriegler, January 1999).</li> </ul>	<ul style="list-style-type: none"> <li>• VWL, Child care is a Family Issue: Guidelines (<i>to be published mid 1999</i>)</li> <li>• Current Report</li> </ul>
Western Australia	<ul style="list-style-type: none"> <li>• Malcolm, The Hon. Mr Justice D K, Chief Justice of Western Australia, <b>Report of the Chief Justice's Taskforce on Gender Bias,</b> 30 June 1994.</li> </ul>	<ul style="list-style-type: none"> <li>• Adoption and implementation of recommendations on: sexual harassment guidelines by WA Law Council; development of appropriate questioning guidelines for recruitment of articulated clerks; and WA Women Lawyers Association and WA Law Society currently developing mentoring scheme for women lawyers.</li> </ul>

# The Way Forward: Conclusions and some suggestions for future strategies and research

## Conclusions and common themes

- The majority of evidence examined for this report indicated the existence of gender bias in the form of direct and indirect discrimination against women lawyers. The career patterns of women graduates are remarkably similar in the various jurisdictions in which studies have been carried out (Victoria, WA, NSW, ACT and Tasmania), all demonstrating an overall pattern of more women than men working in less prestigious (and lower paying) positions in the professions.
- Whilst women are under-represented in private firms, particularly in senior positions, their presence in the corporate and public sector (including academia) is growing.
- Career paths of male and female law graduates diverge dramatically within only 5 years of graduation from Law School.
- Having children and even the expectation that women will have children, has profound effects on women lawyers' careers.
- Most women lawyers with children are very involved in their care (94%) compared with only 22% of their male colleagues with children.
- Balancing home responsibilities and a legal career therefore places significant challenges on women.
- Whilst alternative career structures in private firms, and flexible work practices in all legal workplaces may be of assistance to lawyers with responsibilities outside work, particularly women with families, such policies must be carefully designed and implemented so as not to further marginalise such employees.
- A significant proportion of male and female solicitors are dissatisfied with the law firm environment: up to 30% of all solicitors in private firms are considering leaving their position.
- The cost to a firm of losing a 4th year lawyer ranges from \$61,400 for a small firm to \$145,000 for a large firm.
- Both male and female lawyers are moving from private law firms to the corporate and public sectors.
- These findings suggest a significant rethinking and redesign of the practice of law in all settings: private firms, corporations and the public sector, is critical.
- Policies emphasising flexibility and sensitivity to and consideration of all employees' private needs and demands are essential if the profession is to retain and develop its valuable human resources.
- Evaluating their employees' needs and developing appropriate strategies to address these needs will be critical to a firm's growth and success.



<sup>70</sup>Keys Young, **Research on Gender Bias and Women Working in the Legal System**: Report Prepared for NSW Department for Women, 6 March 1995, at pp. 111 - 112.

<sup>71</sup>*Ibid.*

<sup>72</sup>*Ibid.*

<sup>73</sup>The Keys Young report considered the position of women barristers also, hence their inclusion of the NSW Bar Association as a key player: the involvement of the Victorian Bar Council may be more limited, in relation to this report, and would depend upon the particular strategies developed by VWL in association with the WBA (Vic.)

## The Way Forward

The approach and comments of the NSW Keys Young Report<sup>70</sup> are particularly instructive and strongly endorsed here. Their concluding comments, “Prospects for change: barriers and opportunities,” are worth repeating, and should be borne in mind by those responsible for devising future strategies based upon the findings of this and other reports.

Identifying both the *barriers* and *opportunities* for change provides a good starting point for strategic planning of future projects. Similarly, acknowledging that this complex problem has no simple “quick-fix” solution, but that it requires a multi-faceted approach, involving a range of key players and a range of strategies, sounds obvious but has significant implications for how this report is moved forward, and the effectiveness of future projects.<sup>71</sup>

Importantly, the Keys Young Report notes that:

- Devising gender equity strategies in the legal profession is a difficult and complex business. If recommendations for change are to be practical, they must be strategic and also “reality-based.” Acknowledging and identifying some of the obstacles to change is the first step in addressing them, and in ensuring that suggested strategies are practical and capable of implementation.
- Various barriers and obstacles to change were identified - some were political, some cultural and some legal. Others are structural or resource-based.
- No single approach or strategy will solve the problem of gender bias in the profession overnight. The problems and their solutions are multi-faceted. The problems must be tackled on a number of fronts, and involve a number of key players.<sup>72</sup>

The key players identified were specific to NSW. The Victorian equivalents include

- the Law Institute of Victoria
- the Victorian Bar Council<sup>73</sup>
- private law firms
- the Affirmative Action Agency
- the Human Rights and Equal Opportunity Commission
- the Anti-Discrimination Board
- Law Schools
- State Government - Attorney General’s Department and Office of Women’s Affairs
- Community Legal Sector.

*The following should be added to this list:*

- Victorian Women Lawyers
- Women Barristers Association (Vic.)
- the Australian Women Lawyers Association
- Legal Practice Management Associations (in most states)
- Law Council of Australia (specifically the General Practice Section)
- Federal Government - Office of Women’s Affairs, Attorney General’s Dept
- other employers of women lawyers.

This report provides a starting point, and raises issues for further discussion and research, which could form the basis of future projects and activities.

# Strategies

The prime purpose of this research is not to dictate strategies, but rather to provide the data with which VWL and others can then devise and implement their strategies, appropriate to their own goals, membership and resources. The following are intended as general suggestions.

1. Ensure review of this project's findings, and VWL's subsequent recommendations and Action Plan, based on this project within two years, to monitor progress.
2. Consider establishing permanent sub-committee of LIV or other appropriate body to regularly review issues raised in (1) above. VWL to consider appropriate participants and convenor of such a sub-committees (eg. per NSW suggestions above).
3. Further co-ordination (pooling and dissemination of information, networking) between women lawyers in different states (eg. via VWL and AWL, other organisations).
4. Further co-ordination between VWL and Women Barristers' Association.
5. Pending results of research suggested below, various information and education opportunities to be developed for all members of the profession.

Variety of strategies could include:

- **Educating** firms and other legal workplaces on the value of **flexible work practices** and recognising the personal needs of employees (whether family, study, illness, recreational etc.)
- **Education - including consideration of the cost** of losing valued employees due to lack of flexibility of profession/ workplace. This type of education strategy is clearly long-term, and would require commitment of resources and time by VWL and other stakeholders. Could be of use to form a permanent committee (per NSW) to steer this, which would have on it not just VWL members, but key stakeholders, such as firms and other employers of women lawyers, government and the LIV, to ensure all parties remain committed to an agreed process and outcome.
- **Lobbying** parliament for legislative change, if required.
- **Lobbying** LIV/ Law Council for procedural guideline/ disciplinary procedure changes (if required).

## Future research

1. Conduct research specifically assessing needs of **women and men** lawyers with family responsibilities (may include dependent/ ill parents, siblings, not just children) in Victoria. Without wanting to restrict or direct the methodology, the research could investigate what additional services or changes to job, work and career structure would be useful. Eg. Whether child care facilities, flexible work practices and flexible hours would be of assistance.

A similar or parallel study could investigate what work environment factors and support would lead to an improvement in job satisfaction for all lawyers, particularly in balancing professional and private lives (not necessarily for family reasons, but for other reasons such as study, outside interests and general leisure and recreation pursuits.)

2. Following on from latest VLF study (Herron, 1998), commission a study on the year level and reasons for young solicitors/ employee lawyers leaving their place of work.
3. Commission original research or alternatively, have researcher review existing research, on link between employee dissatisfaction and turnover and productivity; and on any link between productivity and budgets/ hours of work.
4. Examine which alternative organisational structures could effectively be adopted for legal firms eg. part-time partnership and alternative lateral career path to partnership such as senior counsel, consultant. This could be followed up with an educational or seminar program to encourage firms to consider such options.
5. Investigate the impact on women lawyers' careers of alternative styles of work and concentration in certain areas of practice on women.
6. Commission research to collate data on types of flexible work practices which have been implemented in legal workplaces (eg. firms, corporate, government, academic) and their impact on women. Specifically monitor progress and promotion opportunities for women (and men) who use flexible work practices, compared to their full-time colleagues.
7. Conduct literature review to determine what material exists on the impact on women and men with family responsibilities of the non-firm legal work environment eg. lawyers in corporate, public sector, academic, commercial and community legal positions. If there is a paucity of such data, it would be worth undertaking research looking at the issues raised in points 1,2,3,5 and 7 raised above. At present, there appears to be more focus on lawyers in firms, which is understandable given that this is where most are employed. However, as the drift away from private firms to alternative legal jobs increases, and for a fuller picture of lawyers' work environments - both their positive and negative aspects - such a study would be relevant.

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