

# National Attrition and Re-engagement Study (NARS):

## DISCUSSION PAPER

MARCH 2014

### Introduction

1. In November 2012 the Law Council engaged Urbis Consulting to undertake the National Attrition and Re-engagement Study (NARS) with the following objectives:
  - a. explore the drivers of attrition of women in the legal profession, and understand how these may differ compared to male lawyers;
  - b. explore the experiences and motivators of different cohorts of women, considering practising status, type of employment, stage of career and other factors; and
  - c. identify factors that may assist in retaining or re-engaging women in private practice, the Bar and the profession as a whole.
2. The NARS forms part of the Law Council's *Strategic Framework for the Recruitment and Retention of Women Lawyers (Strategic Framework)*, which was adopted by Law Council Directors in June 2011.
3. The NARS research methodology included:
  - a. an online survey of 3960 practising lawyers, lawyers who have left the profession and individuals who have completed legal studies but have never practised; and
  - b. in-depth interviews with 82 survey participants and key stakeholders to further explore the experiences and motivating factors for women who are practising or who have chosen a different career path.
4. The Law Council of Australia has prepared this Discussion Paper in response to the NARS, outlining areas identified by the NARS requiring particular focus. The Law Council will subsequently work with Constituent Bodies to develop a long-term strategy for the legal profession, to drive cultural and systemic changes that result in greater retention rates among women lawyers and re-engagement of women lawyers who have left the profession.
5. As the national voice of the profession, the Law Council is committed to advancing this work and facilitating the implementation of the long-term strategy. This Discussion Paper is intended to provide a focus for professional bodies, law firms/practices and barristers as the primary drivers of change.
6. The Law Council recognises that the strength of the legal profession depends upon nurturing a professional environment that fosters and rewards individual ability, application and integrity, shielded from the impact of discriminatory, extraneous and arbitrary practices. The overarching objective is to provide a productive, inclusive and sustainable legal profession that is well placed to serve the needs of the community. To this end the Law Council adopted a Diversity Policy in 2013 and has undertaken the NARS as a component of a broader strategy to address diversity and equality of opportunity in the legal profession.
7. In order to focus discussion and policy generation, the Discussion Paper presents firm proposals in relation to five key areas of need:
  1. Career path transformation;
  2. Leadership and role modelling;
  3. Relationships and support;
  4. Workplace safety; and
  5. Transparency and measures of success.

# 1: Career path transformation

Legal skills and experience are acquired after admission through vocational and on the job training, usually working closely under the supervision of a senior practitioner who provides support, guidance and advice, as required. Seniority and prospects for advancement post-admission inevitably fall at a critical time for women in terms of choices about linear progression and family responsibility. With the introduction of post-graduate legal qualifications and delay of on the job skills acquisition, this pressure may be further exacerbated, as the average age of commencing legal practice and child-bearing converges.

The NARS identified a need for greater transparency, ease of access to information around rights and reasonable expectations in relation to work hours, fee setting, pay and performance, with clarity around expectations with respect to career progression and goals.

Key drivers of dissatisfaction identified through the NARS were the pressures of time-billing and excessively long working hours. Less than half the women working in large and medium sized firms were satisfied with their access to flexible working arrangements, their level of work-life balance and the level of support in their organisation for achieving work-life balance. Moreover, both women and men regarded the use of available flexible working arrangements as jeopardising to their career prospects due to the competitive nature of the workplace, leaving women with the burden of transforming themselves, their family and relationship choices and firm remuneration models in order to succeed.

The NARS also identified perceived bias on the grounds of gender, age and work status, for example, as a barrier to advancement. There is a perception that recruitment, promotion, transfer and case/client allocation depend upon subjective decision making informed by conscious or unconscious bias that unfairly operates to exclude candidates for arbitrary reasons.

**The Law Council, law schools and providers of practical legal training should:**

## Review qualifications to practice

- monitor and review the impact of post graduate law studies and resulting delay in qualification to practise upon the opportunity for progression of women lawyers to senior positions in the legal profession.
- identify critical periods for professional vocational training and any impediments to the advancement of women inherent in the current qualification and skills acquisition process.
- devise reforms including a review of the qualifying degree admission core components and considering deferring non-core competencies to post admission studies.
- develop practical legal training and post-admission reforms to serve the needs of lawyers working flexibly, part time or on leave.

**The Law Council's Constituent Bodies, law firms and women lawyers associations should, with the support of the Law Council, work to:**

## Promote flexible work practices

- develop policies and promote research on the effectiveness and business case of the full range of flexible work arrangements that can be introduced.
- stimulate debate on changing cultural norms about the value of 'face time' and the need to be seen in the workplace in order to conduct one's job effectively.
- break the perception that flexibility and senior roles are incompatible, and that only women want/need/access flexible work arrangements, by identifying and publicising senior male and female role models who need predictability with work schedules and who work flexibly within an organisation.

- review performance agreement policies and practices, networking and marketing events to ensure they do not unintentionally discriminate against or disadvantage those using flexible work arrangements, or who have family responsibilities.

## Engage with individuals taking career breaks and support their return to work

- design and run accelerated learning programs for those who have taken temporary leave from work to encourage and assist their re-entry to the organisation.
- maintain contacts with those on temporary leave and invite them to networking, learning and mentoring opportunities.

## Explore alternative billing models

- stimulate research and debate on different business models of billing - including the continued appropriateness and future sustainability of the current billable hours framework - and effective deployment of talent, knowledge sharing and collaborations, technology and new systems to improve productivity.
- publicise success stories of alternative models that have been used effectively in organisations.
- stimulate research and discussion around different performance measurement models, which do not link revenue generation exclusively to billable hours - such as supervision, mentoring, precedent development and marketing.

## Encourage worklife balance

- conduct research and examine the effects of work-life balance tensions on the mental health of legal professionals, and resulting costs to an organisation.

**Law firms should, with the assistance of law societies and associations and the bars:**

## Provide guidance about working hours, performance and pay

- provide guidance on the expected performance of employees relative to their level, hours required to work and expected range of remuneration.
- provide clear and accessible information concerning expectations of billing and other benchmarks required for promotion.
- publish data collected from various firms and organisations and compare these statistics and trends with other professions.
- provide mechanisms for information to be shared concerning fee structures and levels for independent practitioners, including barristers.

**Law firms, law societies and bar associations should:**

## Address conscious and unconscious bias

- provide unconscious bias awareness training to those in positions of management and authority, or with relevant employment/engagement decision making authority, to understand how unconscious knowledge and stereotypes impact upon judgments, decisions and behaviour.
- review performance/promotion criteria and networking and marketing events to ensure they are 'bias free' and do not unintentionally discriminate against lawyers working part-time or who access flexible working arrangements.
- promote leadership training in the value and benefits of diversity and an organisation which reflects the increasing gender diversity among law practices' and barristers' clientele.

## 2: Leadership and role modelling

The absence of women in senior leadership positions contributes to a male-dominated culture that works against women's satisfaction, progress and promotion. It adds to a sense of isolation and unhappiness for some, particularly women with young families. Moreover, the comparative lack of female senior leaders in the profession was seen to play a part in a male-dominated culture where it is difficult for women to progress.

The linear structure of law firms means junior lawyers are dependent upon working closely with senior practitioners to develop professional skills and expertise. Unhappiness with the 'culture' or leadership of an organisation is a key driver for those leaving private practice. The converse is also true – that both women and men enjoy working in collegiate workplaces and teams, with engaged and supportive mentors, supervisors and managers.

International research indicates gender diversity is clearly and consistently linked to better financial and organisational performance – and that leadership from the top is essential to achieving success.

**Law firms, law societies and bar associations should:**

### Nurture and promote potential leaders

- develop tools and support firms and bar chambers to identify and nurture emerging female talent.
- actively promote and include women in leadership activities and signal their commitment to gender diversity at senior levels.
- promote the advancement of women lawyers through pledges, undertakings and affirmative, measurable targets for women in partnership, director, senior associate and senior counsel positions.

### Encourage organisations to see gender diversity as a way to harness talent and reduce costs

- build awareness of the business case for gender diversity through review and promotion of relevant Australian and international research.
- publish success stories of effective gender equity strategies employed in Australian law firms and legal practices.
- investigate and publicise the high cost to the business of replacing an employee who leaves after considerable investment in training and professional development.

### Improve and celebrate visibility of women lawyers

- consider setting voluntary targets and goals to promote greater gender-balance on legal professional association Boards, Councils and committees.
- actively seek participation by women to ensure conferences and forums have a good gender balance in speakers and panel members.
- establish women lawyers achievement awards for individuals who have excelled in their field and paved the way to success for other women lawyers.
- establish state industry awards for the firms that best demonstrate effective gender diversity strategies and/or employ flexible work practices.

## Raise awareness of ways to successfully achieve gender equity and diversity

- facilitate or provide access to high quality leadership programs, including programs specifically addressing diversity and leadership issues.
- embrace 'hands-on' leadership, driving gender diversity from the top, including partners/CEOs/leaders of the profession providing clear direction and personally promoting diversity.

## 3: Relationships and support

The NARS findings indicate that female lawyers experience career progression differently to their male counterparts. Almost one-third of the female survey participants were unhappy with their opportunities to access mentors to support their career development, regardless of their stage of career, size of firm or sector. Better professional support through mentoring was an element that would have encouraged women to stay in private practice rather than resign. A growing interest in sponsorship programs has also been identified as a way to progress leaders.

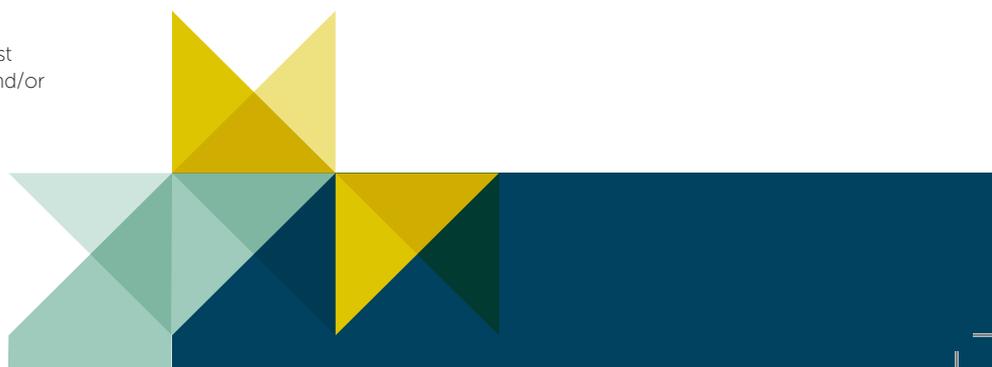
**Law firms, law societies and bar associations should:**

### Help lawyers develop and cultivate relationships to support their career progression

- promote the concept among, and provide support for, senior leaders and decision makers to mentor and sponsor lawyers at earlier stages of their career.
- host networking opportunities to encourage lawyers looking to progress their career to access mentoring and sponsorship with experienced lawyers and senior barristers.
- develop the skills of lawyers to identify and pursue mentoring and sponsorship opportunities and relationships.
- include leadership, business and personal development training in CPD programs.
- develop and provide internal training and CPD programs on how to be an effective mentor.
- provide incentives for mentors and sponsors to provide support to lawyers at earlier stages of their career – for instance, linking such assistance with the performance agreements of senior lawyers.
- consider making mentoring and sponsorship part of the mandatory core competency areas to satisfy annual CPD requirements.

### Provide guidance to lawyers directly to support their own career progression

- develop structured and personalised development strategies and training targeted at different stages of a lawyer's career.
- develop and provide training specifically targeting women lawyers, including on leadership, negotiating salaries, seeking promotions and access to flexible work arrangements.



## 4. Workplace safety

High levels of bullying, discrimination and sexual harassment were identified in the legal profession, with one in two women and one in three men having reported being bullied or intimidated in their workplace. In addition, one in four women experience sexual harassment and one in two women experience gender discrimination in their current workplace.

The legal profession appears to tolerate levels of bullying and harassment, particularly of junior employees and barristers by senior lawyers. Rules, guidelines and policies are in place to complement legislative requirements, but these are not perceived as providing adequate protection and have not succeeded in creating a welcoming environment for young lawyers.

**Law firms, bar chambers and Constituent Bodies should:**

### Combat bullying and sexual harassment

- communicate zero tolerance for bullying, harassment and discrimination.
- develop and promote clear and accessible written policies and guidelines and complaint processes to address gender discrimination, sexual harassment and bullying.
- develop and encourage participation in anti-bullying and harassment CPD programs.
- appoint and resource trained and skilled health professionals and expert human resources personnel to assist those wishing to report bullying, harassment and discrimination, and assist them to a satisfactory outcome.

## 5. Transparency and measures of success

Baseline metrics, ongoing data collection and ready access to information concerning successful programs are critical to encouraging action and measuring the success of positive measures. As the national voice of the profession, the Law Council is well placed to facilitate, assist and oversee the method of data collection, the regular reporting of metrics and the setting of benchmarks for the profession.

**The Law Council and its Constituent Bodies should:**

### Monitor and publicise gender equity statistics in the profession

- support and facilitate the collection of national quantitative and qualitative data on the gender composition of the legal profession to provide baseline metrics and a tool for strategic development and ongoing monitoring and communication.
- utilise this data to monitor and analyse gender composition metrics regularly on a state/territory and national basis, to identify trends within different areas of practice and at differing levels of seniority.
- publicise and promote discussion of profession-wide statistics to identify drivers of attrition and inform future responses.
- retain and publish complete and accessible data to the legal profession.

**Law firms, law societies and associations and the bars should, with the assistance of the Law Council:**

### Employ internal measures to improve rates of attrition and leadership across the profession

- consider the introduction of gender diversity indicators in the performance reviews of senior lawyers, executives and leadership teams and professional committees.
- set voluntary gender targets and goals which take into account the particular needs and circumstances of an organisation.
- encourage professional associations to connect with women lawyers' associations and committees in each jurisdiction to jointly collaborate, develop and implement gender diversity initiatives.
- consider and promote voluntary procurement protocols for purchase of legal services, whereby purchasers commit to consider a potential supplier's diversity and inclusion practices and performance as part of the tender process.
- identify government and corporate procurement protocols requiring adherence to diversity practices and publicise and acknowledge those with protocols and those adhering to them.
- promote and adopt the Law Council of Australia's Equitable Briefing Policy.
- include questions relating to gender diversity and flexible work arrangements on outgoing staff exit surveys in organisations and forms for discontinuing practising certificates.
- track and openly report on gender equity trends in organisations to staff.
- publish data collected on internal leadership levels and attrition.

