

8 July 2014

Childcare and Early Childhood Learning
Productivity Commission
GPO Box 1428
Canberra ACT 2601

By email: childcare@pc.gov.au

Dear Madam / Sir

Inquiry into Childcare and Early Childhood Learning

The Law Council of Australia is pleased to provide this submission in response to the Productivity Commission's Issues Paper regarding Childcare and Early Childhood Learning.

The Law Council supports the development of a system that encourages workforce participation and provides the following feedback regarding childcare and the results of the Law Council's recently-released National Attrition and Re-engagement Study (NARS).

The Law Council represents the 16 Australian state and territory law societies and bar associations and the Large Law Firm Group. In this way, the Law Council represents approximately 60,000 lawyers across Australia.

This submission has been prepared by the Law Council's Civil Justice Division with input from the Law Council's Equal Opportunity Committee (EOC) and the Bar Association of New South Wales (NSW Bar).

National Attrition and Re-engagement Study

The Law Council commissioned the NARS to address diversity within the legal profession.

The objective of the Study was to produce a report, including recommendations for legal associations and law practices, outlining practical measures which can be implemented to address the causes of high attrition rates among women lawyers, and re-engage women lawyers who have left the profession.

This is the first national study of its kind, involving an online survey of lawyers to obtain quantitative data on drivers of attrition, career progression and re-engagement among female and male lawyers; and in-depth interviews with survey participants and key stakeholders to further explore the underlying reasons behind these trends.

Comprehensive research was undertaken over a period of 10 months and the survey was distributed online from 6-31 May 2013 to approximately 60,000 practising and non-

practising lawyers. Eighty-two in-depth interviews were subsequently conducted by telephone with self-nominated survey participants and stakeholders, including currently practising lawyers, lawyers who have left the private profession and law graduates who have never practised. Approximately 4,000 participants nationwide took part in the study, representing close to one in ten practising members of the Australian legal profession.

On 14 March 2014, the Law Council of Australia launched the final report. The NARS report found that women left the law due to a range of factors including discrimination, harassment, bullying, long hours and workplace culture. Attrition and stalled progression to senior levels in the legal profession due to family responsibilities was identified as a key issue for women.

Many participants in the Study considered access to flexible working arrangements to be very important for retaining working parents in the legal profession. However, many interview participants felt women's career progression, reputation and exposure to interesting work were negatively impacted by prioritisation of family responsibilities, part-time employment and accessing flexible working arrangements generally. The research suggests that there is a perception of conscious or unconscious bias against women and men who adopt flexible working arrangements to balance family responsibilities.

A significant proportion of survey respondents indicated they had experienced some form of discrimination, intimidation or harassment at work. Whilst this issue appears to have been encountered by a considerable proportion of the profession, irrespective of gender, women were significantly more likely than men to have experienced discriminatory treatment, including discrimination due to family or carer responsibilities (27 per cent of females, 11 per cent of males).

The survey found that women who were the primary carer of children believed they were more likely to experience discrimination compared to those who were not the primary carer or who did not have children. In addition, discrimination due to family responsibilities was also reported significantly more often by women working part-time than women working full-time.

The provision of onsite childcare facilities at workplaces was raised as a means to better cater to working parents.

The Law Council released a Discussion Paper at the public launch of the NARS Report, which outlines areas identified by the NARS that may require particular focus. It was intended to provide a starting point for discussion about implementation of the NARS Report's recommendations. The NARS final report and associated fact sheets are available online: [here](#), and the Law Council would be pleased to send hard copies on request. The Law Council encourages the Commission to consider the results of the NARS in the course of this Inquiry.

The Law Council will continue to work with its constituent bodies to develop a long term strategy for the legal profession, with the aim of driving cultural and systemic changes that result in greater retention rates among women lawyers and re-engagement of those who have left the profession.

Childcare and retention of women

The EOC has been interested to explore how access to childcare affects women's participation in the workforce and also in study or extra-curricular programs (such as law degrees, law internships, clerkships, and volunteer work) which may facilitate workforce participation. The EOC is interested in the various childcare options available to working parents and support mechanisms, particularly tax deductibility of childcare and tax rebate criteria.

The EOC is concerned that the current childcare rebate system is too restrictive.

According to research conducted by the NSW Bar, the lack of flexible childcare options has led many of its members to resort to private, in-home childcare, which is significantly more costly as it is not covered by the childcare rebate and is not tax deductible.

The rising cost of childcare, combined with the ongoing non-tax deductible status of private child care options has and will continue to affect the retention of women in the legal profession with family and carer responsibilities.

The Law Council is advised that increasing the availability and flexibility of childcare options would have a positive impact, particularly for women, who are able to participate in the workforce. Increased workforce productivity for women would understandably lead to positive flow on effects regarding the gender pay gap, women's superannuation and retirement funds.

The cost of care

Increasing care costs can result in the loss of skilled workers, representing a significant loss for workers, employers, Australian business and the economy.

In 2007 an independently established non-government organisation known as the Taskforce on Care Costs (TOCC) carried out surveys across Australian workplaces. Five key findings from the TOCC research are outlined below.

1. There is a clear relationship between whether an individual will undertake paid work and the cost of care:
 - one in four employees with caring responsibilities is likely to leave the workforce because the cost of care is too high; and
 - one in four employees with caring responsibilities has already reduced their hours of work because the cost of care is too high.
3. Workers with caring responsibilities want real choices:
 - 35% of employees with caring responsibilities would increase their hours of work if care was more affordable;
 - 60% of unemployed carers would re-enter the workforce if care was more affordable; and

- 52% of part-time employees would increase their hours of work if care was more affordable.
4. The situation is getting worse, not better:
- In 2006 the Consumer Price Index increased by 4%, but care costs (for children, the elderly and people with a disability) increased by 10%; and
 - In 2006 79% of employees with caring responsibilities said that affordability of care influenced their current working relationships, representing a 12% increase from 67% in 2004.
5. Current financial supports for Australians with caring responsibilities are inadequate in terms of level and coverage:
- 75% of Australians with caring responsibilities believe their care costs should be shared equally with Government;
 - 77% of Australians with caring responsibilities believe that there should be a range of delivery options for additional financial support – that is, payments directly to the carer, the care service provider, or via an employer (for example, fringe benefits tax); and
 - 93% of Australians with caring responsibilities believe the child care tax rebate should be extended to elder and disability care.

The Law Council suggests that the Federal Government should focus on:

- a review of the Government funded scheme of paid parental leave, particularly as it applies to the self-employed (including barristers), and with a view to removing the criteria limiting eligibility for the scheme to those earning less than \$150,000 per annum;
- a review of the Government's Policy for Paid Parental Leave, under which working mothers would be provided with 26 weeks of paid parental leave at their actual wage or the national minimum wage (whichever is greater) plus superannuation, and its potential to improve retention rates of women;
- the ongoing non-tax deductible status of child care costs; and
- a review of the child care rebate, with a view to increasing it from 50% of the cost of care, increasing the cap on the rebate from \$7,500 per annum per child, and expanding its application to private in-home childcare.

Paid parental leave and child care costs for the self-employed

The Australian Government Paid Parental Leave scheme provides financial support to eligible working parents of newborn or recently adopted children. Under the scheme, the Government funds employers to provide Parental Leave Pay to their eligible employees. The Department of Human Services is responsible for administering the scheme, which complements parents' existing entitlements to paid and unpaid leave in connection with the birth or adoption of a child. The scheme does not change any of an employee's existing leave entitlements, but does not provide a new entitlement to leave. An

employee's Parental Leave Pay is in addition to his/her employer-provided leave entitlements.

Government funded paid parental leave is currently available to individuals who have an individual adjusted taxable income of \$150,000 or less in the financial year either before the date of birth or adoption, or the date of the claim (whichever is earlier).

The scheme is available to eligible full-time, part-time, casual, seasonal, contract, and self-employed workers - including sole proprietor barristers – and can therefore play an important role in maintaining women and men at the Bar.

However, as eligibility for the government scheme is limited to individuals earning an income of under \$150,000, a barrister earning over \$150,000 will not have access to any scheme of paid parental leave. Such a barrister is highly likely to be providing specialist legal services of an equivalent or greater level of value, skill and complexity to, for example, a solicitor in a large firm or in-house environment on similar levels of income with potentially greater levels of workplace support and access to an employer funded scheme of paid parental leave which is likely to be more generous than the Government funded scheme.

The Government scheme fails to take into account the significantly fluctuating income inherent to barrister's practices, which is also a feature of the self-employed sole trader. A focus only on the completed financial year prior to the birth, adoption or claim ignores the fact that a barrister's individual adjusted taxable income could average far less than the \$150,000 threshold in the two or three years prior to the claim due to cash flow issues. A barrister's income is often paid substantially late by clients, and many barristers work on speculation in certain practice areas, which can result in delayed payment of income for months or years. This excludes many barristers from being eligible for the Government scheme, despite having low incomes in the financial year prior to and post the financial year on which the \$150,000 threshold is applied.

The Government scheme also fails to take into account the purchase of barrister's chambers. The purchase of barrister's chambers is generally necessary and inevitable to secure longevity at the Bar, but is not included in a barrister's individual adjusted taxable income. The purchase of chambers can range from anywhere between \$10,000 to \$450,000, depending on the region, location and floor on which the barrister practices. This is significant in that a barrister may have an adjusted taxable income of over \$150,000 but be in significant debt or without disposable income from their practice due to the purchase of chambers.

A review of the Government funded scheme in such instances would go a significant way to ensuring the fairness and equality of its application between the employed and the self-employed, including barristers. The self-employed should not be penalised by being rendered ineligible for the Government scheme because of the timing of payments by clients or customers that are beyond their control, or due to tax rulings regarding the deductibility of business expenses. A review would assist in providing access to justice and support to retain high quality legal services, consistent with recognising the importance of an educated and highly skilled Australian workforce.

These issues have led many members of the Bar to resort to private in-home childcare, including nannies, or to abandon their practices on a full time or part time basis. It is not unusual for there to be over a year's wait for a position in a childcare centre, and the

opening hours of childcare centres are often inflexible and do not always coincide with the sometimes long hours that barristers are required to work. Costs associated with private in-home childcare can be prohibitive, especially for more junior members of the Bar. The ongoing non-tax deductible status of child care costs, late fees and the avoidance of late fees provide significant pressure affecting the retention of women with family and carer responsibilities at the Bar.

Conclusion

Legislative measures are the most effective when supported by adequate and appropriate policy measures. The Law Council recommends that the Commission undertake a comprehensive analysis of the Australian Government Paid Parental Leave scheme and the new Government's alternative scheme, the continued non-tax deductible status of child care and the child care rebate scheme in its review.

The Law Council looks forward to the release of the final report and would be pleased to provide further contributions to the inquiry if the opportunity arises in the future, or to respond to any queries arising from this submission. The responsible officer at the Law Council is Emma Hlubucek:

Yours sincerely

MARTYN HAGAN
SECRETARY-GENERAL