

12 September 2014

Childcare and Early Childhood Learning Inquiry
Productivity Commission
GPO Box 1428
Canberra ACT 2600

Dear Madam/Sir

Inquiry into Childcare and Early Childhood Learning

The Law Institute of Victoria (LIV), together with the Victorian Bar, is pleased to provide this submission in response to the Productivity Commission's Draft Report on Childcare and Early Childhood Learning.

The LIV and the Victorian Bar commend and endorse the Law Council of Australia submission to the Productivity Commission, dated 8 July 2014 (Attachment 1), and echo the Law Council's comments. Although the submission was drafted in response to the Issues Paper, the comments remain reflective of the current concerns around participation of parents in the workplace and the cost of childcare for both employees and the self-employed.

Workplace Participation

Women's participation in the workplace continues to be well below that of men – in 2012-13, women's participation was around 65%, compared to 79% for men.¹ Women are much less likely than men to work full time (55% compared to 84%), making up over 70% of the part time workforce.² Evidence suggests that workplace participation rates for women by age show a marked dip between the ages of 25 and 44, which is not evident for men.³ These research findings indicate that having children significantly impacts on women's workplace participation.

The LIV and Victorian Bar note similar trends in the legal profession with women's workplace participation and attrition. Currently, women represent the majority of law graduates, yet women comprise only 46% of the practising profession.⁴ Whilst women have been the majority of graduates

¹Marian Baird et al, 'Budget 2014-15 – A Gender Lens' (Report, National Foundation for Australian Women, July 2014) 16.

²Marie Coleman and Helen Hodgson, 'Women's Voices: Report from consultations on factors influencing women's decisions on work-force attachment, including tax and transfers' (Report, National Foundation for Australian Women, September 2011), 37.

³ Ibid.

⁴ Alexander Ward, 'President Column: Why we must retain female lawyers' (July 2011) *Australasian Law Management Journal*, 1-2.

for over 25 years, this has not resulted in women being equally represented in senior roles. According to the Law Council, women represent only 19% of senior positions in law firms.⁵ In Victoria, women represent 27% of barristers and only 10% of Queens Counsel and Senior Counsel positions.⁶

A Victorian study on female attrition in the law noted there was a 41% attrition of women lawyers from private practice between 1998 and 2008.⁷ These high levels of attrition were also noted in the Law Council's National Attrition and Re-engagement Study Report (**NARS Report**),⁸ released in March 2014.

The NARS Report further found that family responsibilities were identified by women in the legal profession as a key driver of attrition. Family responsibilities were also seen as having contributed to stalled progression to senior levels in the legal profession. Female and male lawyers experienced different career development and career progression opportunities. The NARS Report 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.⁹ Discrimination due to family responsibilities was also reported significantly more often by women working part time than women working full time.

Research conducted by the Victorian Women Lawyers in 2013 also found challenges for lawyers with parental responsibilities returning to work.¹⁰ Such challenges included lack of flexibility in the workplace. In some instances where flexibility was provided, work was of a lower value, complexity or profitability, leading to limitations on career progression.

In response to the findings of the NARS Report, the Victorian Bar has implemented the *Quantum Leap* project (Attachment 2) to address the challenges faced by women barristers, while the LIV has developed an Implementation Plan addressing key areas of need (Attachment 3). Many law firms have diversity targets for women in senior positions, however the current level of attrition impacts on the achievability of those targets.

The availability of childcare which is accessible, flexible and affordable is important in providing parents with a level of flexibility in the workplace, allowing them in turn to meet expectations of employers and clients. The direct link between the cost of childcare and workplace participation for parents has been highlighted in many submissions to the Commission. We believe that government

⁵ Alexander Ward, 'Women's Lawyer's Forum' (Speech delivered at the LAWASIA Conference, Seoul, 11 October 2011) <<http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/speeches/20111011LAWASIAConferencespeech.pdf>>

⁶ Victorian Bar Inc, Victorian Practising Counsel, Division A1, as at 12 September 2014.

⁷ Sara Charlesworth and Iain Campbell, *Scoping Study For An Attrition Study of Victorian Lawyers: Report to Victorian Law Foundation* (2010) Centre for Applied Social Research, RMIT University, 9.

⁸ Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report* (2014).

⁹ *Ibid*, 34.

¹⁰ Victorian Women Lawyers, Submission to Australian Human Rights Commission, *Pregnancy and Return to Work National Review*, 2014.

policies that proactively support both parents in balancing paid work and family responsibilities would have a positive impact on female attrition and workplace participation in the legal profession.

Tax and Income Disincentives

As identified in cost-benefit framework discussion in the Commission's Draft Report, a critical factor affecting parents' participation in the workforce is the Effective Marginal Tax Rate (EMTR). The Commission's modeling demonstrates that the interaction of childcare fees, the Family Tax Benefits (FTB) Part A and B, and higher rates of income tax give the secondary income earner an economic disincentive to return to full time employment. This is compounded by the number of children in care and the type of care required.

The self-employed face unique challenges in establishing income eligibility for the Government's Paid Parental Leave scheme. In this regard, we particularly note and endorse the comments contained in the Law Council submission.

The LIV and the Victorian Bar submit that the Productivity Commission should consider tax reform initiatives which have the effect of removing disincentives to workplace participation, including:

1. Reviewing the non-tax deductible status of childcare costs;
2. Reviewing the childcare rebate;
3. Reviewing the eligibility criteria for the Government's Parental Leave Pay scheme to take into account the fluctuating income of the self-employed;
4. Reviewing Effective Marginal Tax Rates so that secondary income earners are not penalised for working more hours and to ensure that parents at all levels of the income distribution receive equitable benefits.

The LIV and the Victorian Bar look forward to the release of the Final Report and would be pleased to provide further contributions to the Inquiry.

Yours sincerely

Geoff Bowyer
President
Law Institute of Victoria

EW Alstergren QC
Chairman
Victorian Bar Council

Encl

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

Victorian Bar Council

The Victorian Bar Equality Project

‘The Quantum Leap’

Purpose

1. This Paper describes a number of measures adopted by the Victorian Bar Council on 6 November 2013 in anticipation of the findings of the Law Council of Australia *National Attrition and Re-engagement Study (NARS)*. It addresses the issues we expect will be identified as drivers of attrition of women from the independent bars and positions the Victorian Bar as a national leader on issues of equality and diversity.
2. The Project comes 15 years after the landmark *Equality of Opportunity for Women at the Victorian Bar Report* and is consistent with promoting diversity and equality in the 2013 Strategic Plan.
3. An outline of the activities in the Project is provided on page 2.

Background

NARS

4. According to the LCA, the NARS has been commissioned by the LCA to:
 - a. confirm trends in progression of both male and female legal practitioners;
 - b. outline practical measures which can be implemented to address the causes of high attrition rates among women in the legal profession; and
 - c. re-engage women who have left the legal profession.
5. The NARS will document the research process and presents an analysis of findings, including recommendations for legal associations and law practices to assist in retaining women lawyers and to re-engage those who have left the profession.
6. The NARS is not yet available for circulation. It will be launched by the LCA in early 2014. The Chair is concurrently overseeing the NARS on behalf of the LCA and a reference group is developing the recommendations of the Report.

The Quantum Leap

7. Despite more than two decades of attention to the issue of equality of opportunity for women in the legal profession, women remain poorly represented at leadership levels. This flows through inevitably to the pool of women available to act on significant matters and accept executive, judicial and corporate sector appointments.

8. Progress towards gender equality has been extremely slow despite strong economic and moral arguments underpinning the case for equality and perennial enthusiasm from various quarters for measures to address the issue.
9. The independent Bars are not immune with junior women continuing to leave the profession in the middle years. Systemic barriers to progress remain difficult to identify and address. Recent studies confirm the complex nature of the problem and the challenges for the profession as a whole.
10. The Bar remains committed to contributing to the realization of equal opportunity for women in the legal profession. Fifteen years on from our landmark report on this issue, the Victorian Bar is and will remain a national leader on this important issue. In doing so we will ensure that we attract and retain the best talent and improve our performance and competitive advantage.
11. The Bar strategy will include specific measurable objectives taking into account the work that has already been undertaken and the new boldness that is required to break through entrenched difficulties.

The Project

A. Bar Barometer

Aim: To record accurate historical quantitative and qualitative data to better inform Bar members about the success of positive measures and encourage individual action; to provide base metrics and a tool for strategic development.

The 'Bar Barometer' is a document to be collated annually in July after the membership statistics are published, recording data on the number and percentage of women at the Victorian Bar and comparative gross earnings by seniority and area of practice. The Bar Barometer will be collated for Bar purposes and used to as a benchmark to permit an analysis of the success of various measures.

The data on number and percentage of women is already collected for Membership Statistics. Collation of these numbers and the Bar's aspirational membership targets will encourage awareness of the Bar's commitment to equality and transparency.

B. The Silks' Undertaking

Aim: To improve the income and experience of women juniors by encouraging the briefing of women in significant cases.

The Silks' Undertaking engages with leaders of the Bar to commit to actively advancing equality and diversity at the Bar. The Bar Council resolved that a foundation group be invited by the Chair to sign the Silk's Undertaking and agree to publication of their name as a signatory to Bar members, with the option for others to sign on subsequently, publicly or privately.

C. Unconscious Bias CPD Program

Aim: To overcome ignorance and unconscious bias of those with briefing making authority by exposing them to the skills of women barristers.

An Unconscious Bias CPD program will be introduced into:

- the Readers' Course;
- the Bar Council induction;
- the Silk Development Program;
- the Bar's general CPD calendar; and
- the Clerks.

It is further proposed that the Bar Council, Committees and Bar Associations and CPD organisers be encouraged to consider diverse representation to normalise the appointment of women to Bar committees, Associations and CPD presenter panels and to increase awareness unconscious bias. This could take the form of a diversity awareness prompt or checkbox at the time of booking facilities or appointing committees.

D. Culture Change

Aim: To respond to reported experiences of discrimination and harassment and contribute to work satisfaction.

Recent research by the VHREOC noted high levels of reported harassment and discrimination at work. This is confirmed by reporting of these matters. The Bar has supplemented its formal complaints processes with an informal process for managing sexual harassment and vilification complaints under the conduct rules.

The Bar Rules currently include a proscription against vilification and harassment and an informal process for managing complaints. The Rules are silent on the issue of bullying. The *ABA Barristers' Conduct Rules* have not yet come into force in Victoria. They been approved by the Bar and the ABA and the Bar has consulted with the LSB with a view to introducing them at or before the introduction of Uniform Profession Legislation. These rules will proscribe bullying, harassment or discrimination. A strategy for moving to the ABA rules is proposed, including a Guideline to address bullying and the appointment of new Bar Conciliators.

The Bar seeks to create a professional culture with no tolerance of sexism, racism, bullying, harassment and violence by encouraging senior members and judges to take an active role in confronting these issues wherever they occur and developing clear processes and protocols to record and respond to complaints of this conduct by members of the Bar and the judiciary. This will involve:

- Engaging with an organisational psychologist or experienced human relations consultant to assess if the Bar has developed a culture which is non-inclusive and develop mechanisms and reforms to address this if required.
- Including and promoting various resilience programs available in the CPD calendar.

-
- Increasing awareness of the issue of workplace bullying and of the Bar's complaint resolution procedures with the Workplace Bullying Guidelines.

E. Improved Mentoring for Women

Aim: To address the difference in relative earnings and experience of women barristers.

To improve the income and experience of women barristers, a program is proposed where women barristers will be offered mentoring support when they reach key career milestones of two years, seven years and pre-Silk. The offer will refer to the CPD program, which will include sessions designed to assist business development and achieving professional goals offered by the Bar and an opportunity to arrange a close mentoring with an appropriate senior barrister if desired. This form of mentoring will involve a closer relationship and be akin to 'sponsoring' or 'coaching' models.

From time to time the Bar offers individual CPD sessions, tailored to a barrister's individual needs. These may include seminars, workshops and conferences. They may be supplemented to include identified areas of need such as voice coaching, presentation skills, business coaching, general coaching or mentoring.

The CPD sessions will be reviewed at least biannually with input from the Clerks, EDC, CPD and Readers Course Committees.

When warranted by demand, the Bar can assist in identifying a provider and, as far as possible, securing a 'member benefit' rate for participating women barristers.

F. Re-engagement Roundtable

Aim: To engage with women during a career break and provide support and encouragement for their return to practice.

It is proposed that an invitation be extended to all those on parental leave to re-engage by attending a *Practicalities of Practice Roundtable* lunch, hosted quarterly by senior women barristers. The host will be provided with topics for discussion, including practical advice about restarting practice, refreshing knowledge of practice requirements and changes to the law and practice in key areas and facilitating reconnection with colleagues and potential instructors.

The Bar Office will manage communications with those on parental leave by extending invitations to the lunch and continuing to provide information on particular CPD sessions of interest as noted above.

G. Exit Surveys

Aim: To continue to inform the Bar of the reasons for attrition and a measure of the success of the components of the Project.

In order to address and respond to the reasons barristers leave practice at the Bar, it is proposed that voluntary Exit Surveys be completed by email with all counsel ceasing practice, including those appointed as Judges. This information will be collected to understand the drivers of attrition of women at the Bar and identify factors that may assist in retaining women at the Bar.

26 May 2014

Ms Emma Hlubucek
Senior Policy Lawyer
Law Council of Australia
19 Torrens Street
BRADDON ACT 2612

Via email to: emma.hlubucek@lawcouncil.asn.au

Dear Emma

National Attrition and Re-engagement Study (NARS) Final Report and Discussion Paper – Consultation Process

The Law Institute of Victoria (LIV) welcomed the release of the Law Council's highly anticipated NARS Final Report and Discussion Paper in March 2014. Through its Diversity Taskforce, the LIV provides a leadership role in promoting diversity within the legal profession. The Taskforce champions the following areas of diversity in the legal profession: gender, indigenous representation, disability, sexual orientation and identity and cultural awareness. Further information about these initiatives can be found on the LIV website.¹ Recently, the LIV has also become a member of the Diversity Council of Australia to further demonstrate its commitment to fostering diversity in the legal profession.

The LIV is pleased to share its response to the Report and outline action items that it will commit to in order to address the findings.

The LIV recognises that as a professional organisation, it has an important role in highlighting and addressing gender diversity through: thought leadership, role modeling, promoting the business case for change, promoting and rewarding best practice, continuing professional development, industry mentoring and networking, research and evaluation, transparency and accountability and finally establishing mechanisms to address bullying and sexual harassment.²

The LIV considers that the key areas of need arise from the findings of the Report:

- Career Path Transformation;
- Leadership and Role Modelling;
- Relationships and Support;
- Workplace Safety; and
- Transparency and Measures of Success.

¹ <http://www.liv.asn.au/About-LIV/Diversity>

² NARS Report, page 87.

The LIV has developed an implementation plan in which action items have been categorised according to the key areas of need outlined above. The implementation plan is *attached* for reference.

The LIV wishes to highlight particular initiatives it is working on which are of relevance to the findings of the NARS Report.

National Voluntary Diversity Code [Transparency and Measure of Success]

As the Law Council is aware, the LIV has been working towards establishing a National Voluntary Diversity Code based on the Law Society of England and Wales' Diversity and Inclusion Charter. The objectives of the Code are to:

- To promote increased diversity in the Australian legal profession;
- Build knowledge and awareness of diversity best practice and the practical application in the Australian legal profession;
- To provide a benchmarking tool for the legal profession to assess against specific diversity indicators;
- Provide resources for firms to develop more inclusive work practices;
- To share best practice knowledge across the Australian legal profession through opportunities for networking; and
- To actively encourage firms to engage with a sector wide dialogue and collective action about barriers to achieving diversity in the Australian legal profession.

The LIV has developed a consultation paper in order to begin broader consultations with the legal profession. It is envisaged that consultations will take place with a wide range of law firm personnel including partners, human resource managers and diversity and inclusion managers. This consultation phase will be critical to establishing the likely uptake and success of the Code. The LIV looks forward to the contribution of the Law Council's Equalising Opportunities in the Law Committee in the consultation process.

Alternative Pricing Project [Relationships and Support]

The LIV has been working towards establishing an Alternative Pricing Project, to provide practitioners with the tools, knowledge and support to effectively reduce client dissonance regarding fees and to transition from the current 'billable hour' fee structure to alternative billing approaches

The objectives of the Alternative Pricing Project are to:

- Support lawyers by providing ongoing assistance as firms implement changes to billing approaches; and
- Ensure that employees are not always burdened with unrealistic 'billable hour' performance measures which do nothing to motivate employees or promote transparency and accountability in the work delivered.
- Engage with firms in order to assist lawyers in achieving improved; client loyalty, referrals and financial outcomes along with a reduction in fee disputes;
- Educate lawyers and provide them with the tools and knowledge to develop the competence and confidence to deal with pricing issues in a positive manner;

- Improve client satisfaction by providing clients with greater clarity on fee expectations and to shift the focus of clients to outcomes to allow clients to have a more positive interaction and experience with their lawyers;

The LIV has developed a proposal that outlines the processes and the steps required to successfully implement the Alternative Pricing Project in order to make it a valuable and effective tool for practitioners who are seeking to transition their fee structure to other billing approaches..

Law Institute Journal – Work in Progress Column [Leadership and role modelling]

From March 2012, the *Law Institute Journal* (LIJ) has included a column titled Work in Progress. This column provides examples of both men and women in the legal profession engaged in flexible working practices. The LIV will continue to promote the use of flexible work practices in the legal profession.

In conclusion, the LIV congratulates the Law Council on the NARS Report and looks forward to working together in future to improve attrition in the legal profession and to lead positive change with respect to diversity in the legal profession.

If you have any queries in regards to any matters raised in this letter, please contact Joy Acquaro, General Manager – Legal Policy and Practice

Yours sincerely

Geoff Bowyer
President
Law Institute of Victoria

LIV Response to Law Council National Attrition and Re-engagement Study Report
Implementation Plan

Key Area of Need 1: Career Path Transformation				
NARS Action item	Responsibility	LIV Action Items	Progress made	LIV Department Responsible
(a) Review qualifications to practice <i>Includes identifying any impediments to the advancement of women inherent in the current qualification process</i>	Law schools and providers of practical legal training in conjunction with LIV, LCA.	<ul style="list-style-type: none"> Consult with law schools and College of Law, Leo Cussens to conduct review of current requirements to practice. 	To be discussed at meetings with PLT providers and Law Graduate of the Future Forum – Q3 2014	Future Focus Committee YLS
(b) Promote flexible work practices <i>Promote research on effectiveness/business case of flexible work, stimulate debate on changing cultural norms</i>	LIV in conjunction with LCA, legal employers and women lawyers associations	<ul style="list-style-type: none"> Develop and publish a 'business case' for flexible work practices. Encourage debate and raise public awareness through LIJ: <ul style="list-style-type: none"> Special issue on flexible work Article addressing 	VWL revising their flexible work practices guidelines (to be incorporated into National Voluntary Diversity Code)	LIJ

LIV Response to Law Council National Attrition and Re-engagement Study Report
Implementation Plan

		<p>the perceived value of 'face time' at the office</p> <ul style="list-style-type: none"> - Interviews with practitioners who are successfully using flexible work practices - Article highlighting the benefits of flexible work and associated benefits of work/life balance and mental health 	<p>On-going since March 2012</p>	LIJ
		<p>Undertake review of LIV events to ensure they do not unintentionally discriminate against or disadvantage those with flexible work arrangements or family responsibilities.</p>	<p>Meeting to be arranged with new GM CPD in early May</p>	Events/CPD
(c) Engage with individuals taking career breaks and	Legal employers with the support of	Design accelerated CPD units aimed at those who have taken leave to assist	Discussions being held with Professional Development team regarding holding the LIV's " <i>Return</i> "	Events/CPD

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<p>support their return to work</p> <p><i>Develop learning programs for those who have been on leave, and maintain contact while on leave</i></p>	<p>LIV, LCA, women lawyers associations</p>	<p>re-entry to professional life.</p> <ul style="list-style-type: none"> - Focus on important changes in law and practice in the last 12 months - Include information on adjusting working styles to accommodate family life <p>Maintain contact with LIV members on temporary leave.</p> <ul style="list-style-type: none"> - Offer lower level membership while on leave so members can still receive invites to networking and learning events - Set up network of returning lawyers <p>Education series for</p>	<p><i>to Work”</i> and components of the <i>“Re-energise your career in the law”</i> series.</p> <p>Expected delivery in 3 or 4Q 2014</p> <p>Membership category created in 2010 (free)</p>	<p>M&M</p>
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		<p>employers.</p> <ul style="list-style-type: none"> - Explain business case for staff retention and flexible work - Educate on how to offer flexible work and change workplace culture 		Events & CPD
<p>(d) Explore alternative billing models</p> <p><i>Stimulate research and debate on different billing models and different performance measurement models which do not link revenue generation exclusively to billable hours.</i></p>	LIV, LCA and relevant stakeholders	<p>Publicise in the LIJ success stories of alternative models that have been used effectively in organisations.</p> <p>Gauge use of alternative billing models through Diversity Code survey.</p> <p>Alternative Billing Project</p> <ul style="list-style-type: none"> • Currently seeking funding for 'value based billing/alternative pricing project which will include professional development, 	<p>Refer to Key Area of Need 5</p> <p>Excepted delivery in 4Q 2014</p>	<p>LIJ</p> <p>LPP</p> <p>LPP</p>

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		diagnostic tool and resources for the legal profession.		
(e) Encourage work-life balance <i>Research effects of work-life balance on the mental health of legal professionals and resulting costs to an organisation</i>	LIV in support of LCA, legal employers and other stakeholders	<p>Research links between work-life balance, mental wellbeing and associated costs to employers.</p> <ul style="list-style-type: none"> • LIJ coverage of the issues in briefs, news, editorials and legal features. The Work in Progress column showcases flexible work options, the According to Merit column examines gender issues and a mentoring column profiling successful partnerships is scheduled to start in 2014. • LIV has become a member of the Diversity Council of Australia 	Ongoing	LIJ

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<p>(f) Provide guidance about working hours, performance and pay</p> <p><i>Including expected performance of employees relative to their level and expected range of remuneration</i></p>	<p>Legal employers with the assistance of LIV and other relevant stakeholders</p>	<p>Consult with legal employers to develop reference paper of average expectations for different levels of employees.</p> <p>Use data from Diversity Code to publish average salaries of grads, lawyers, senior associates etc.</p>		<p>Future Focus Committee</p> <p>LPP</p>
<p>(g) Address conscious and unconscious bias</p> <p><i>Including unconscious bias awareness training, review of performance/promotion criteria, leadership training, promote benefits of diversity</i></p>	<p>LIV in conjunction with legal employers and relevant stakeholders</p>	<p>Offer unconscious bias workshops for management/HR.</p> <ul style="list-style-type: none"> - Educate on how performance/promotion criteria can unintentionally discriminate <p>Offer leadership training workshops focusing on the benefits of diversity.</p> <p>Publish and promote the business case for diversity</p>	<p>Developing unconscious bias training for members.</p> <p>Executive coaching pilot project to commence in May 2014</p> <p>Draft business case to form part of the consultations for National Diversity Code.</p>	<p>Events/CPD</p> <p>LPP/President</p> <p>LPP/Diversity Taskforce</p>

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Key Area of Need 2: Leadership and Role Modelling				
Action item	Responsibility	Action Item	Progress	LIV Department Responsible
(a) Nurture and promote potential leaders <i>Develop tools to support legal employers to nurture female talent. Include women in leadership activities. Promote women leaders through measurable targets</i>	Legal employers with the support of the LIV and relevant stakeholders	<p>Encourage legal employers to commit to measurable targets and evaluate performance through the National Voluntary Diversity Code.</p> <p>Promote mentoring and other support mechanisms for emerging female talent.</p> <p>Promoting 'sponsorship' in the legal profession</p>	<p>To be included in consultations on the National Diversity Code</p> <p>LIV's current Mentoring program currently under review</p>	<p>LPP</p> <p>M&M</p> <p>VWL/LIV</p>
(b) Encourage organisations to see gender diversity as a way to harness talent	Legal employers with the support of the LIV and relevant stakeholders	Publish and promote the 'business case' for diversity in the legal profession.	Development of business case for diversity as part of the development of the National Voluntary Diversity Code	LPP/Diversity Taskforce

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<p>and reduce costs</p> <p><i>Build awareness of the business case for gender diversity, publish success stories of effective gender equity strategies, and publicise the high cost of replacing an outgoing employee</i></p>		<p>Increase awareness and appreciation of diversity through the National Voluntary Diversity Code.</p> <p>Publish case studies of successful diversity initiatives in the annual report of the National Voluntary Diversity Code.</p> <p>Publish in the LIJ an article exploring the costs of replacing outgoing employees and highlighting the value of staff retention.</p>	<p>LIV has become a member of the Diversity Council of Australia</p>	
<p>(c) Improve and celebrate visibility of women lawyers</p> <p><i>Set voluntary targets to promote gender balance on professional association Boards.</i></p>	<p>Legal employers with the support of the LIV and relevant stakeholders</p>	<p>Conduct review of LIV governance and structure of Committees to determine whether gender balance achieved.</p>		<p>LPP (2Q 2014) LIV Council</p>

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<p><i>Seek participation of women in conferences/panels. Establish women lawyers' achievement awards and state industry awards for firms demonstrating effective gender diversity strategies.</i></p>		<p>Review speakers/panels at LIV events to ensure active participation of women.</p> <p>Incorporate a women's achievement award and firm diversity award into the LIV Awards.</p>	<p>Dame Roma Luncheon President's Lunches</p>	<p>CPD/events</p> <p>Awards Committee</p>
<p>(d) Raise awareness of ways to successfully achieve gender equity and diversity</p> <p><i>Provide access to leadership programs, and embrace 'hands-on' leadership driving diversity the top.</i></p>	<p>Legal employers with the support of the LIV and relevant stakeholders</p>	<p>Offer leadership training workshops focusing on the benefits of diversity.</p> <p>Contact partners from high-performing firms under the National Voluntary Diversity Code to develop case study of hands-on leadership and diversity initiatives.</p>	<p>LIV Diversity Webportal provides practice management resources on gender equity and diversity. Integrated information to be launched in April</p>	<p>LPP</p>

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Key Area of Need 3: Relationships and Support				
Action item	Responsibility	Action Item	Progress made	LIV Department Responsible
(a) Help lawyers develop and cultivate relationships to support their career progression <i>Promote concept of mentoring amongst senior leaders. Host networking opportunities between young and senior lawyers. Include leadership, business and personal development training in CPD programs. Provide incentives for mentors or consider making mentoring mandatory.</i>	Legal employers with the assistance of the LIV and relevant stakeholders	Facilitate mentoring program amongst young female lawyers and senior practitioners. <ul style="list-style-type: none"> - Host networking events for all mentors/mentees to increase exposure - Promote mentoring program in 'Young Lawyers' section Offer training workshop on career development skills.	Discussions being held regarding holding the LIV's Return to Work series.	CPD/Events
		Include recognition of legal employers with	Part of consultations on National Voluntary Diversity Code	LPP

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		strong mentoring programs in the National Voluntary Diversity Code annual report.		
(b) Provide guidance to lawyers directly to support their own career progression <i>Develop personalised development strategies targeted at different stages of a lawyer's career. Develop training specifically targeting women lawyers.</i>	Legal employers, LIV, LCA and other professional associations	Offer training workshop on career development skills. <ul style="list-style-type: none"> - Offer a session aimed specifically at young women lawyers and cover topics such as leadership, negotiating salaries, seeking promotions and access to flexible work arrangements. 	<ul style="list-style-type: none"> • LIV Mentoring Program • Career Pathway training to be developed • Executive coaching pilot in development 	M&M LPP/President

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Key Area of Need 4: Workplace Safety				
Action item	Responsibility	Action Item	Progress Made	LIV Department Responsible
<p>(a) Combat bullying and sexual harassment</p> <p><i>Communicate zero tolerance for bullying and harassment, develop clear written policies, encourage participation in anti-bullying CPD programs, appoint skilled health and HR professionals to assist those wishing to report bullying, harassment and discrimination.</i></p>	Legal employers with the support of LIV and relevant stakeholders	<p>Review LIV policy for reporting and resolution of bullying and harassment issues.</p> <p>LIV is offering a series of compliance courses suitable for all practitioners and support staff which include:</p> <ul style="list-style-type: none"> • Workplace Bullying • Equal Employment Opportunity • Electronic communication and social media in the workplace 	On going	<p>HR</p> <p>CPD/Events</p>

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		<ul style="list-style-type: none">• Sexual harassment in the workplace• Workplace health and safety		
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Key Area of Need 5: Transparency and Measures of Success				
Action item	Responsibility	Outcomes (interim and longer term)	Progress made	Dept Responsible
(a) Monitor and publicise gender equity statistics in the profession <i>Facilitate collection of national quantitative and qualitative data on gender composition, use data to identify trends, promote discussion of statistics and publish complete data to the legal profession.</i>	LIV in conjunction with LCA, legal employers and relevant stakeholders.	Implement the National Voluntary Diversity Code to collect national diversity data (including gender statistics). <ul style="list-style-type: none"> - Publish an annual report identifying trends, improvements and weaknesses 	<ul style="list-style-type: none"> • Development of National Voluntary Diversity Code. <ul style="list-style-type: none"> ○ Consultations to commence ASAP 	LPP
(b) Employ internal measures to improve rates of attrition and leadership across the profession. <i>Introduce gender</i>	LIV in partnership with legal employers with support of relevant stakeholders.	Develop 'best practice' benchmarks for signatories to the National Voluntary Diversity Code including gender targets.	<ul style="list-style-type: none"> • Development of National Voluntary Diversity Code. <ul style="list-style-type: none"> ○ Consultations to commence ASAP 	LPP

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<p><i>diversity indicators in performance reviews of senior lawyers. Set voluntary gender targets. Promote voluntary procurement protocols for purchase of legal services whereby purchasers consider a potential supplier's diversity practices. Promote the LCA's Equitable Briefing Policy. Include questions relating to gender diversity/flexible work in outgoing staff exit surveys. Track and report on gender equity trends.</i></p>		<p>Develop the Procurement Policy as a part of the National Voluntary Diversity Code to encourage purchasers of legal services to favour suppliers with good diversity practices.</p> <p>Incorporate the LCA's Equitable Briefing Policy as an indicator of good diversity practice under the National Voluntary Diversity Code.</p> <p>Develop an exit survey for LIV staff including questions relating to gender diversity and flexible work practices.</p>		<p>LPP</p> <p>LPP</p> <p>HR</p>
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LEGEND

LPP – Legal Policy & Practice Department

HR – Human Resources Department

M&M – Membership and Marketing Department

CPD & Events – Continuing Professional Development and Events Department