



Victorian Equal Opportunity
& Human Rights Commission

Changing the rules

> The experiences of female lawyers in Victoria





Victorian Equal Opportunity & Human Rights Commission

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Changing the rules: the experiences of female lawyers in Victoria

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Foreword

This year over half the graduates from our law schools will be women. Many women will pursue a legal career with a view to making partnership or going to practice at the bar. Yet a law degree is also a qualification that provides a sound base for many different types of careers – graduates are a significant source of skill and expertise that contributes to the community sector and to government, business, media and the arts.

We now know that many women will leave the legal profession after a few years. This is a huge cost to the community and to the sector in skills, expertise, retraining and recruitment. While there are many reasons for this, this report demonstrates that for many women a legal career is difficult to balance with family and carer responsibilities in the absence of strong support from their employer.

We have found many great examples of organisations providing strong support for gender diversity, and for women with carer and family responsibilities. But we were also told of organisations that are not keeping up with what many of us see as business as usual – practical and proactive steps to recruit and retain women in the workforce.

The diversity of organisations that make up the legal sector means there is no single solution to the issues identified in this report – but the legal sector has the same obligations as any employer to ensure gender equity in the workplace and to take positive steps to identify and eliminate systemic discrimination from their workplaces.

The Commission thanks the members of the Critical Friends Group which guided the project: Michael Holcroft, Law Institute of Victoria President; Caroline Counsel, immediate past president of the Law Institute of Victoria; Michael Gorton AM; Debbie Mortimer SC; Associate Professor Beth Gaze and Patricia Athanasiadis, Convenor of Victorian Women Lawyers. We also spoke with a number of leaders within the profession who gave their time and expertise generously to assist the research. I would particularly like to thank Gina Squatrito, Senior Policy and Project Officer, for her work on this report.

We acknowledge there is much good work going on in the profession and we hope this report will contribute to the conversation already underway in the legal sector about the change and leadership required to ensure women have the same opportunities to stay in the profession. We look forward to working with the profession to implement the recommendations and achieve the change we all want to see.



Karen Toohey

Acting Commissioner

Victorian Equal Opportunity and Human Rights
Commission

Executive summary

‘Women are an intrinsic part of the legal profession in Australia. They make up 46 per cent of lawyers practicing in Australia today. In 1960, just 11 percent of law graduates were women, but since the 1990s the majority of Australian law graduates have been women.’¹

The reasons why women are attracted to the profession are varied. Some see it as an instrument for social change; others as an opening to a high-paying career with associated power and independence while some may value the intellectual rigour that the law provides.²

For a few, a law degree could be the launching pad to a political career. Presently the two most powerful posts in Australian politics are held by women – Prime Minister Julia Gillard and Governor-General Quentin Bryce – both with law degrees. Here in Victoria, Marilyn Warren is the first female Chief Justice.

Regardless of the reason for their attraction to the law, there is no doubt that women are graduating and participating in the legal profession at a high rate, however their career trajectories remain quite different to that for men. We know for example that:

- while more than half of all law graduates are female, a recent survey revealed that only 21 per cent of partners in Australian law firms are women³
- women are more likely than men to remain in roles where only an employee-practising certificate is required, while men were more likely to move to roles where a principal practising certificate is required⁴
- women lawyers earn less than their male counterparts
- attrition rates remain a concern for both male and female lawyers, however more women than men leave the law within five years
- discrimination and harassment issues are reported as being present.⁵

As the profession becomes more diverse, it could be assumed that women will eventually share the same career pathways and opportunities as men. However, even with more than 30 years of equal opportunity legislation, it appears that the ‘pipeline’ of increasing numbers of women in the law has not resulted in equality in the profession.

This research has sought to understand and report on the experiences of women in the legal profession – focusing on sexual harassment, discrimination and accommodation of parent and carer responsibilities. The Commission wanted to know how common these problems were, and how they impacted on the women who experienced them. We also wanted to know what positive actions were being taken by legal practices and by the profession as a whole to improve equality for women in the law.

We collected quantitative and qualitative data through an online survey. More than 400 women lawyers participated in the survey. We supplemented this data with interviews with exemplars from the profession and conducted a focus group with women who had left the legal profession.

There is no doubt that in recent years a number of legal firms have worked hard to address some of the factors that have a disproportionate impact on women. The Commission wants to promote and build on this leading practice and this report includes examples of firms that have implemented a variety of positive measures.

Main findings

Discrimination

- Forty per cent of survey respondents had personally experienced discrimination while working as either a lawyer or a legal trainee.
- Discrimination took various forms and manifested in multiple ways. Of the 168 women who reported discrimination, 84 said discrimination took the form of a hostile work environment. Sixty-seven reported workplace bullying, 65 reported unfair work allocation while 64 said the discrimination manifested as unequal remuneration.
- While 56 per cent of survey respondents were from private firms, 70 per cent of those reporting discrimination in their current or former workplace worked in a private firm when the discrimination occurred.
- When asked about their relationship to the discriminator, over half (55.2 per cent) responded that it was their employer or partner, while 40.2 per cent indicated that the discriminator was their immediate supervisor or manager.
- Six out of 10 women who had experienced discrimination did not make a complaint. One in four did not tell or seek help from anyone, including family or friends.
- Respondents reported significant impacts that the discrimination had on their mental health, their physical health and on career opportunities.

Accommodating parental and carer responsibilities

- Thirty-five per cent of survey participants had made a request for their employer to accommodate responsibilities as a parent or carer.
- Of the 149 women who made requests, the majority asked for flexible hours of work (72.5 per cent) while 45.6 per cent requested to work from home.
- Of those who reported the outcome of their request to accommodate parental and/or carer responsibilities, less than five per cent had their request refused.
- Seventy-nine per cent had their request approved; another 16 per cent stated that their request was partially approved.

- Despite the actual outcome of their request, respondents reported employer attitudes that ranged from outright hostility to lack of support, and pressure to increase work hours while others felt devalued by work allocation that did not meet their capacity and experience.

Sexual harassment

- 100 survey respondents (23.9 per cent) stated that they had experienced sexual harassment whilst working as a lawyer or legal trainee in Victoria.
- Another 48 (11.6 per cent) were aware of instances of sexual harassment that had happened to other female lawyers in their workplace in the last 12 months.
- Sexual harassment was likely to occur in the early stages of employment with 63 per cent of incidents occurring within the first 12 months of being in the workplace.
- The most common conduct reported included sexually suggestive comments or jokes, intrusive questions about their private life or physical appearance, unwelcome or inappropriate physical contact, and unwelcome staring or leering.
- In more than three-quarters of cases (78 per cent) the harasser held more senior positions within the workplace as either the immediate supervisor, employer/partner or a more senior co-worker. In just over half the cases (52 per cent) there was more than one harasser.
- Two-thirds of those who had experienced sexual harassment did not make a complaint. Twenty-nine per cent did not tell anyone at all.
- The reasons for not reporting varied from fear of negative repercussions to their career, fear of not being believed or ostracised, lack of awareness about complaints processes, and ineffective responses and remedies.
- Of the respondents who reported the outcome of making a complaint, positive results included: the harassment stopped, receiving an apology, and the complaint leading to changing workplace practices. One respondent received compensation.
- The reported impacts of the sexual harassment included severe mental health and physical health issues as well as work/economic related consequences.

Challenges at a systemic level

Cultural factors in the profession are affecting the career pathways for women lawyers. Literature over the past decade has outlined the disproportionate impact that these cultural and structural factors have had on women.

While variation naturally occurs between firms and organisations, many reports have focused on the long, demanding and intractable nature of billable hours, the male-dominated culture of the profession, a lack of transparency in career progression and remuneration levels, and the importance of personal relationships and bonding to career progression. This study found:

- female law graduates can expect to earn 3.8 per cent less than their male colleagues, while special counsel/consultant positions have a 7.8 per cent pay differential⁶
- issues that contribute to the gender pay gap include gender discrimination, the undervaluation of women's work, pay-setting methods, occupational and industrial segregation, lack of investment in women through training and development and career breaks (including returning to work from maternity leave)⁷
- a lawyer's commitment to the firm was in some cases measured by their visibility, that is how many hours they were seen to put in, creating a culture that valued 'presenteeism'. This perception has adverse impacts for women who have primary parental and carer responsibilities, as it is not conducive to working flexible hours, or to working from home or remote locations⁸
- billable hours was cited by some respondents as a barrier to progression within the profession and was used to justify gender discrimination. Billable hours may in some circumstances, operate as a barrier to women (and men) whose work hours and patterns may require flexibility based on their parental or carer responsibilities.

From our research, it was clear that individual legal practices and firms are working successfully to promote gender equality. Similarly, the Law Institute of Victoria, Victorian Women Lawyers and other professional bodies are working proactively on these issues. However, findings from this study and from other literature point to systemic barriers to the effective workforce participation of women. So while these problems extend beyond Victoria and appear to be issues in other jurisdictions, both in Australia and overseas, it is clear that there is more work to be done to achieve equity in the profession and that the Victorian profession has much to gain from being leaders in this regard.

The Commission is aware of the community perception that lawyers are in privileged positions, with practitioners being educated, empowered, and not necessarily a group that is considered disadvantaged. However, sex discrimination and sexual harassment cut across all demographics, so that even women who are well educated and aware of their legal rights may still be adversely impacted by systemic and cultural practices that entrench discrimination.

As with all professions, gender inequality in the law, and the power structures that continue to support it, need to be addressed proactively at a systemic and organisational level, rather than solely being left to women making individual complaints.

Recommendations

Recommendations to employers are made in the form of a checklist that can be used by individual workplaces. This can be found in Chapter 6.

The following recommendations are made to stakeholders, including the Law Institute of Victoria (LIV). The Commission recognises that industry bodies, such as LIV, are already actively involved in work on these issues, these recommendations build on that foundation.

1. Providing practice support to organisations in the form of information and resources

- a. Publishing guidance to support individual law firms to develop a business case for change. This includes producing tools to assist law firms to measure the cost of staff attrition.
- b. Developing an information exchange on best practice that could provide firms with an opportunity to share information, resources and to discuss challenges and successes.
- c. Developing and promoting education programs including:
 - i) 'Return to Work' planning – this may include education programs, workshops, seminars to assist employers and employees to manage prolonged absences from the workplace.
 - ii) Sexual harassment and discrimination awareness training – as part of the continuing professional development program.
- d. Developing a communications plan to promote issues of gender equality, flexible work practices and awareness of sexual harassment in the legal profession. This could include publishing articles in the *Law Institute Journal*, holding seminars, providing media releases and using social media.

2. Providing support to individuals in the form of information and resources

- a. Developing and promoting education programs to individual practitioners including:
 - i) 'Return to Work' planning – this may include education programs, workshops, seminars to assist employers and employees to manage prolonged absences from the workplace.
 - ii) Sexual harassment and discrimination awareness training – as part of the continuing professional development program.
- a. Promoting available peer mentoring programs to increase participation rates. This includes the:
 - i) Law Institute of Victoria's Mentoring Program.
 - ii) Victorian Women's Lawyers Mentoring Program.

3. Collaborating with key stakeholders on advocacy and policy

- a. Progressing research on different business models of billing. Stimulate debate in the legal profession about appropriateness of the billable hours framework and the profession's culture of equating long hours with productivity and profitability.
- b. In consultation with law firms, considering the development of a voluntary code for the legal sector – this may include the profile of the firm, periodic reporting on percentage of women in partnership positions, number of employees working flexibly, number of complaints made based on gender, number of discrimination/ sexual harassment complaints lodged internally and externally, outcome of complaints. This could also

include that firms opt in for complaints to be handled by a panel review that comprises external organisations.

- c. Collecting data and publishing an annual report card on the state of Victoria's legal sector in the *Law Institute Journal*. This is to include statistics on participation rates, attrition rates, leadership levels, gender pay gap. These reports could be supplemented by the diversity figures for individual practices, this would help to assist to identify problem areas and could also provide potential recruits and clients with access to diversity information.
- d. This could later be enhanced by adding other diversity related factors such as age and ethnicity.
- e. Consider developing sector-wide targets or quotas for women in leadership positions. Stakeholders to explore Australian Stock Exchange model for voluntary/compulsory quotas of the percentage of women at partnership levels.

4. Recognising best practice

- a. Consider expanding the LIV Legal Awards to include a category for promoting diversity (in particular the promotion of gender equality). There is a possibility that the award could then be broken down into suburban, regional and large firms.

5. Additional recommendations

- a. That the Commission work with Diversity Council Australia to consult on the development of a guideline aimed at promoting gender equality in the legal sector – the business case.
- b. That Legal Professional Learning Training providers consider the inclusion of modules on sexual harassment and discrimination as part of their curriculum to build sector capacity around these issues.

Chapter 1: The research

The Commission's interest in women in the law

This research examines women lawyers' experiences of discrimination and sexual harassment at work. With more women entering the law than ever before, and some 15 years since the decision in *Hickie v Hunt and Hunt*, the Commission wanted to find out how far the profession had come in tackling discrimination.

The project arose in response to ongoing concerns about the attrition rate of women from the profession, so that even while more than half of all law graduates are women, many leave within the first five years of practice. In addition, career pathways within legal practice still differ for men and women and the gender pay gap remains a stubbornly difficult problem across the economy.

The legal training required to enter the profession, as well as ongoing professional development, represents a large investment not only by the individual but also by law firms and the broader community. Thus retention, promotion and attrition rates continue to be a cause of concern for legal practices across Australia.

Accordingly, law firms are increasingly starting to look at how gender inequality is affecting the firm's financial position.

Beyond these business concerns, the law also requires proactive steps to be taken. The *Equal Opportunity Act 2010* includes a positive duty on employers to 'take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible'.⁹ As the regulator, the Commission was interested in exploring what the positive duty looks like in this particular context and what steps the legal profession had taken to fulfil this relatively new legal obligation.

In recognising the business case for preventing discrimination and sexual harassment, the

profession as a whole benefits. This research is part of that effort – looking at the current state of play through the experiences of women lawyers themselves and drawing out examples of good practice that individual firms and the profession as a whole can replicate.

Hickie v Hunt and Hunt

In the case of *Hickie v Hunt and Hunt*, Ms Hickie alleged that the law firm Hunt and Hunt discriminated against her on the ground of sex.¹⁰ Ms Hickie was made a contract partner after being with the firm for seven years. At the time of being made a contract partner she was pregnant. She commenced maternity leave and later returned to work on a part-time basis. A couple of months after her return to work, Hunt and Hunt decided not to renew her contract, she was informed of the decision and on the same day she left the firm. Ms Hickie alleged discrimination in the way she was treated by the firm.¹¹ The Australian Human Rights and Equal Opportunity Commission found that there had been 'indirect sex discrimination' within the meaning of s 5(2) of the *Sex Discrimination Act 1984* (Cth).¹² The discrimination occurred as Ms Hickie was required to work full-time as a necessary condition to maintain her position in the firm. This requirement was a condition that disadvantaged or was likely to disadvantage women and it was not reasonable in the circumstances. Ms Hickie was awarded compensation of \$95,000.¹³ This case was important in establishing precedent in the area of sex discrimination. It typifies the discrimination that women lawyers face as they attempt to balance work life and families responsibilities.¹⁴ However, the order did little to require systemic practices to be addressed.

How the project came about

This project was developed in cooperation with the Law Institute of Victoria (LIV) and Victorian Women Lawyers. It builds on previous and current Commission gender equality projects. These include projects on: pregnancy discrimination in the retail sector (*Time to Deliver*); employers' obligations under the Equal Opportunity Act (*Right Smart Employers toolkits*); young women's workplace rights (*My work rights*) and an Equal Opportunity Act practice guideline on sexual harassment currently in development.

The project was guided by a Critical Friends Group, which provided constructive feedback on the project scope and assisted in highlighting issues that were likely to confront women in the law. Members of the Critical Friends group included: Law Institute of Victoria President Michael Holcroft; immediate past president of the LIV Caroline Counsel; Michael Gorton AM; Debbie Mortimer SC; Associate Professor Beth Gaze and Convenor of Victorian Women Lawyers Patricia Athanasiadis.¹⁵

Project objectives

The project sought to:

- hear directly from and document the experiences of women working in the legal profession in Victoria
- identify any patterns in those experiences, with a primary focus on sexual harassment, discrimination and accommodation of family and carer responsibilities
- document examples of leading practice
- consider what, if anything, has changed since the decision in *Hickie v Hunt and Hunt*¹⁶
- facilitate debate on the issue and solutions.

Methodology

This research was undertaken under section 157 of the Equal Opportunity Act, which enables research to be conducted where it would advance the objectives of the Act. These objectives include the identification and elimination of systemic causes of discrimination.

An online survey of women lawyers was conducted between 8 March and 18 May 2012.

The survey was divided into four parts:

- about you
- discrimination at work
- accommodating parental or carer responsibilities and
- sexual harassment.

There were also opportunities for the respondents to describe experiences in their own words. Considerable qualitative information was gathered from these free text answers.

The survey instrument is attached as an Appendix.

In addition, the Commission conducted a focus group for women who had left the legal profession. This covered issues around reasons for leaving the profession, specific instances of sexual harassment, discrimination and workplace bullying, broader workplace cultural issues, role models in the profession and some recommendations for change going forward. Although there was only a small number of attendees, the discussion helped to further contextualise this issue, while providing participants with an opportunity to tell their stories.

Another part of the research was to identify leading practice that may inform recommendations for future change. The Commission interviewed four key informants, asking what factors drive discrimination and sexual harassment, what strategies have been effective in addressing these issues, and what would make a difference in preventing sexual harassment and discrimination from occurring in the first place.

The research was promoted via email to key stakeholders and networks in the legal profession, via social media and through the Commission's and the Law Institute's e-bulletins.

Survey participation

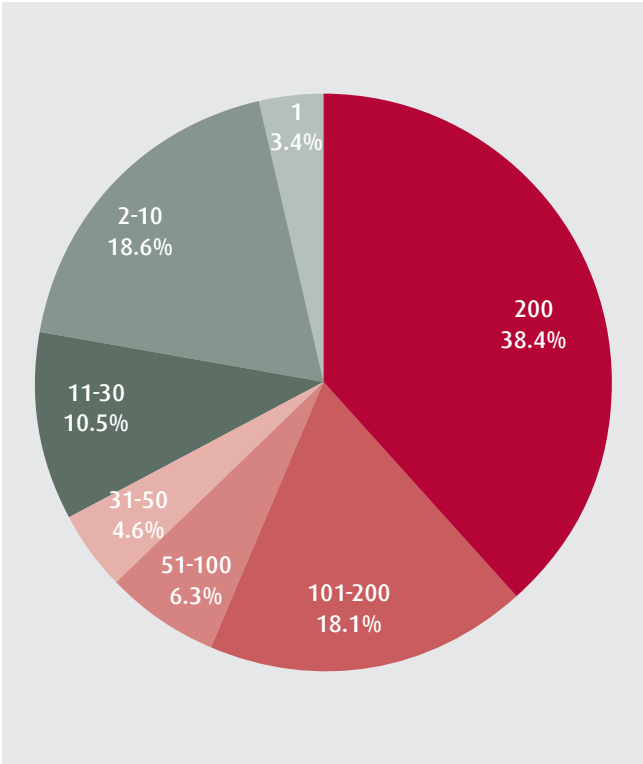
The Commission received 427 responses to the survey. The majority of survey respondents described their current workplace as a private firm (56.4 per cent), 12.1 per cent were from state government departments, 7.9 per cent were from statutory authorities and a further 7.9 per cent were from community legal centres. The remainder were from corporations, Commonwealth government departments, courts/tribunals and other workplaces.

81.9 per cent (344 respondents) worked in the Melbourne CBD, 11.7 per cent (49) worked in suburban practices and 6.4 per cent (27) in regional/ rural practices.

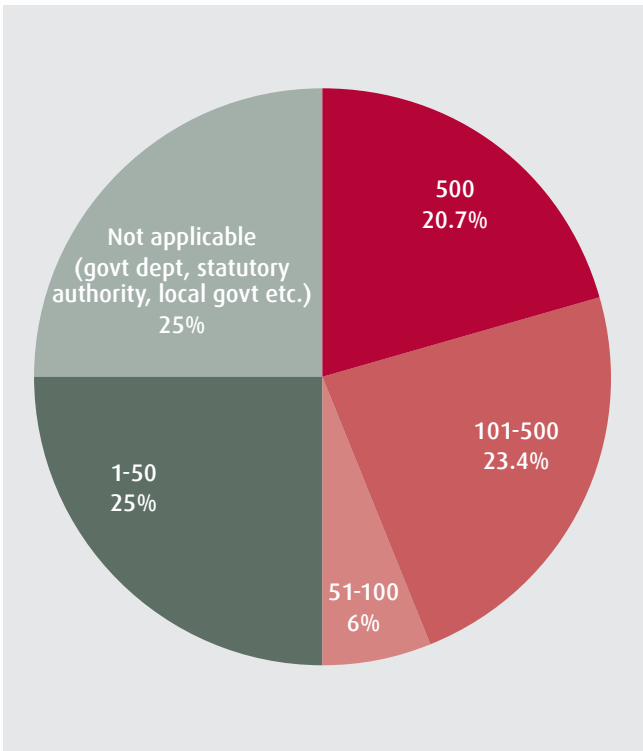
Over half (56.5 per cent) of the survey responses were from women working in large firms with over 100 lawyers., while 18.6 per cent were from small firms with less than 10 lawyers. Less than four per cent worked for sole practitioners.

A different pattern was reflected in the size of the individual workplaces of women lawyers participating in the survey, with 44.1 per cent of respondents from a workplace of over 100 employees. One quarter of respondents were in worksites with less than 50 employees, with 8.2 per cent in workplaces with less than 10 employees.

Survey results – number of lawyers in firm



Survey results – number of employees in workplace



Limitations of the research

Research based on a relatively small number of respondents has inherent limitations. The sample size is small and is not randomised.

Furthermore, this was a voluntary survey; respondents who chose to participate are more likely to have an interest in the subject matter, creating an inherent bias. This should be kept in mind when reading the experiences of respondents.

It should also be noted that many of the survey questions allowed the respondent to record more than one response to the question. Based on this, there are results throughout the report that do not total 100 per cent.

The leading practice excerpts in the report are from Herbert Smith Freehills, Norton Rose and the Public Interest Law Clearing House. The report does not cover leading practice from boutique, suburban or government bodies.

This project focused on the experiences of women working in one profession – the legal profession. Due to the nature of the Commission's jurisdiction, the focus of this research is on women in the law in an employment relationship, therefore self-employed women such as barristers are beyond the scope of this research.

Chapter 2: Discrimination

Main findings

- Approximately 40 per cent (168) of survey respondents stated that they had personally experienced some form of discrimination during their career while working as either a lawyer or legal trainee.
- Twenty eight respondents reported that while they had not experienced discrimination personally, they were aware of instances of discrimination in the broader workplace.
- Overall, approximately 46 per cent (196 respondents) had either experienced discrimination personally or were aware of other women experiencing discrimination in the workplace.
- In addition, 41.8 per cent of respondents stated that they thought discrimination was part of a broader pattern of behaviour (for example, through workplace culture) in either their current or former workplace.¹⁷

What is discrimination?

Discrimination is unfavourable treatment of a person in an area of public life (for example, at work) due to one of 18 personal characteristics (attributes) protected by the *Equal Opportunity Act 2010*.¹⁸

While some of these protected characteristics apply specifically to women (such as pregnancy and breastfeeding) others apply to everyone but discrimination tends to affect women more than men. For example:

- **sex discrimination:** in Victoria, it is against the law to discriminate against someone because of his or her sex.
- **parental and carer status, and family responsibilities:** it is against the law to discriminate against someone because of their actual or assumed parental or carer status, or family responsibilities. 'Parental status'

includes being a biological parent, step-parent, foster parent, adoptive parent or guardian.

'Carer status' refers to someone who has total or significant responsibility for the care and support of another person. The person needing care may be a child, a partner, a parent, a relative or a friend. Carer status does not apply to people who are paid to provide care and attention.

- **physical features:** it is against the law to discriminate against someone because of their physical features – including their height, weight, size or shape. Physical features also includes facial features, hair, birthmarks, tattoos and piercings. It is also against the law for a firm to only hire people who have a particular 'look'; for example, a firm only hiring young, slim women as trainee lawyers.
- **pregnancy and breastfeeding:** it is against the law to discriminate against a woman because she is pregnant or might become pregnant, or because she is breastfeeding a child or expressing milk.
- **marital status:** it is against the law to discriminate against someone because of his or her actual or assumed marital status. Marital status refers to whether or not someone is single, married, divorced, widowed, separated or a domestic partner. The term domestic partner covers all couples, irrespective of sex and sexual orientation.

Discrimination may be 'direct' or 'indirect'.

Direct discrimination is when a person treats, or proposes to treat, a person with a protected personal characteristic unfavourably, because of that personal characteristic.¹⁹ Direct discrimination may occur because people make assumptions about what people with certain personal characteristics can and cannot do. It can also be related to personal preference and prejudices.

In determining whether a person directly discriminates, it is irrelevant whether or not the person is aware of the discrimination or considers the treatment to be unfavourable.²⁰ It is also irrelevant whether or not the personal characteristic is the only or dominant reason for the treatment, provided that it is a substantial reason.²¹

The Equal Opportunity Act also provides that it is unlawful discrimination if an employer unreasonably refuses to accommodate the needs of parents and carers.²²

Indirect discrimination occurs when a person imposes, or proposes to impose, an unreasonable requirement, condition or practice that purports to treat everyone the same, but has (or is likely to have) the effect of disadvantaging persons with one of the 18 protected characteristics.²³

The person who imposes, or proposes to impose, the requirement, condition or practice has the burden of proving that the requirement condition or practice is reasonable.²⁴

When determining whether or not a person is discriminating, that person's motive is irrelevant.²⁵ It is also irrelevant whether a person discriminates by acting alone or in association with someone else, or whether the discrimination occurs through doing an act or failing to do an act.²⁶

Systemic discrimination

Discrimination can become systemic when entrenched or institutional patterns of behaviour or actions affect a range of people. These behaviours and actions can form part of organisational culture that may be reinforced by policies or procedures. An example of systemic discrimination may be a policy that only lawyers who work a minimum of 40 hours per week would be eligible for promotion. This policy is likely to have a disproportionate impact on females (who have parental or carer responsibilities), and is likely to favour the career progression of males, thereby entrenching a culture of management that is predominantly male.

Commonwealth laws

The Commonwealth *Sex Discrimination Act 1984* also aims to eliminate discrimination and sexual harassment and promote greater equality in all aspects of the Australian community.²⁷ The Sex Discrimination Act protects people from discrimination on the grounds of sex, pregnancy and marital status, as well as protecting workers with family responsibilities and prohibits sexual harassment.

The Fair Work Act 2009 also prohibits unlawful workplace discrimination. Unlawful workplace discrimination occurs when an employer takes adverse action against a person who is an employee or prospective employee because of a range of attributes, this includes sex, pregnancy, family and/or carer responsibilities.²⁸

The Fair Work Act describes a number of adverse actions, this includes (but is not limited to) dismissing an employee, discriminating between one employee and other employees or refusing to employ a prospective employee.²⁹

Survey results

Type of discrimination

Figure 1 describes the types of discrimination personally experienced by survey respondents. More than one type of discrimination could be reported.

Figure 1: type of discrimination

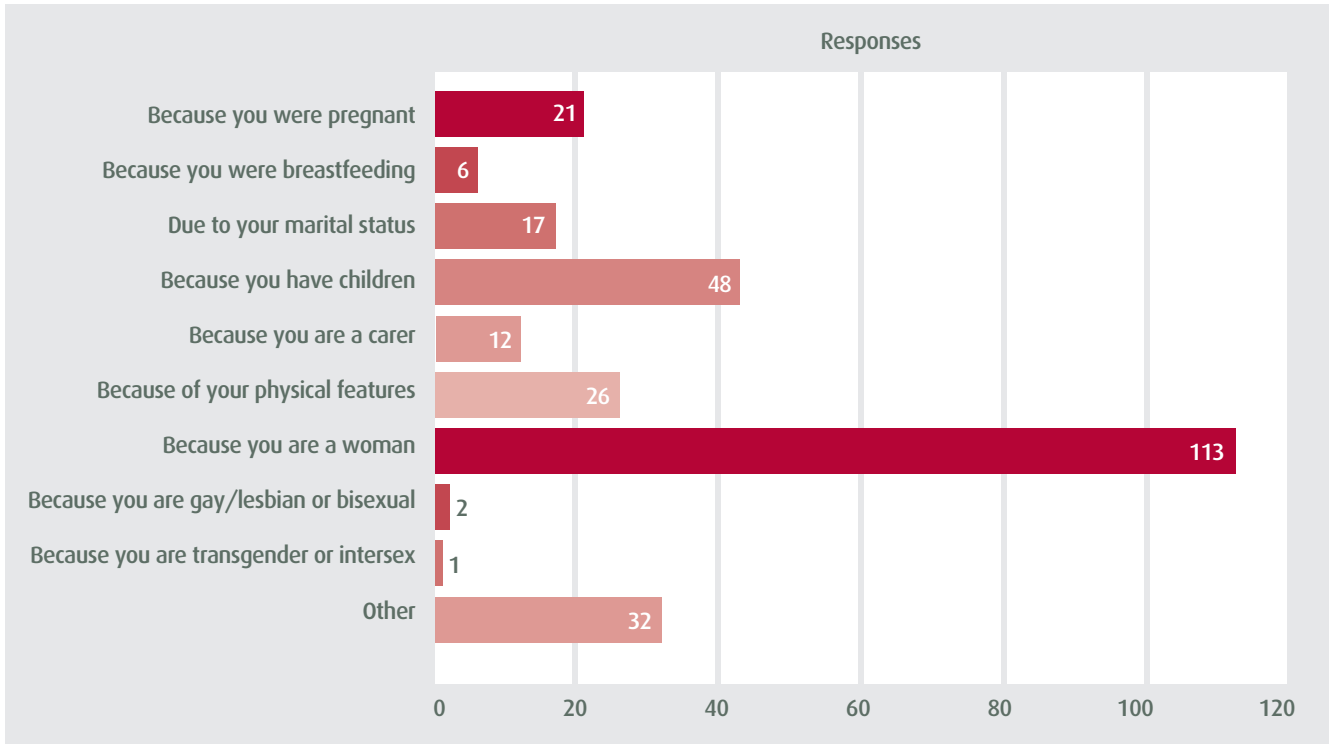
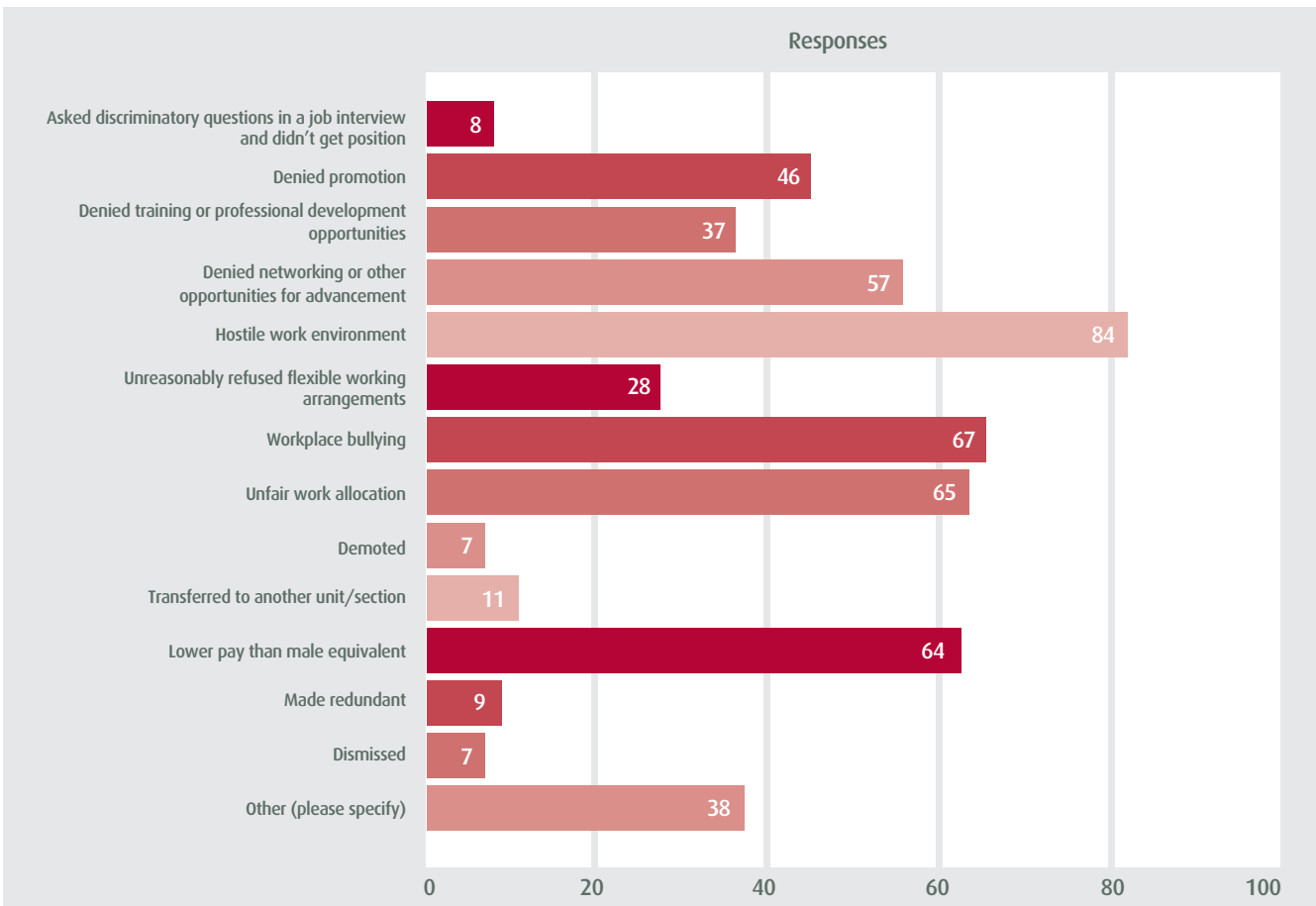


Figure 2: how discrimination occurred



Nature of the discrimination

The discrimination reported was multi-faceted, but was predominately in the form of a hostile work environment. One in three respondents reported workplace bullying.

- 84 respondents reported a hostile work environment
- 67 reported workplace bullying
- 65 reported unfair work allocation
- 64 reported unequal remuneration
- 57 were denied networking opportunities (28.6 per cent), while 46 (23.1 per cent) were denied promotion for what they considered were discriminatory reasons.

Figure 2 represents the ways in which respondents indicated that the discrimination played out. More than one type of behaviour could be reported.

Type of workplace

Of those who had personally experienced discrimination, approximately 65 per cent experienced discrimination in their former workplace, while approximately 35 per cent had experienced, or were experiencing, discrimination in their current workplace.³⁰

80 out of 109 respondents who had experienced discrimination in their former workplace worked in a private firm. While 38 out of the 59 of the respondents who experienced discrimination in their current workplace worked in a private firm. Overall, 70.2 per cent of respondents who had been discriminated against in either their current or former workplace worked in a private firm.

When looking at the size of the firm where this discrimination occurred, one in four respondents (26 per cent) worked in firms with more than 200 lawyers, while 19 per cent were from firms with

between 101- 200 lawyers. Twenty two per cent were from small firms of two to 10 lawyers.

When compared to the survey sample this data suggests a small over-representation of discrimination reports in smaller firms and an under-representation in firms with more than 200 lawyers. There was no variation between the sample size in firms with between 101-200 lawyers.³¹

Who is the discriminator?

Of those who had personally experienced discrimination, approximately 70.2 per cent of respondents stated there was more than one discriminator involved in the conduct.³²

When asked to indicate the gender of the discriminator, 78.4 per cent (153) respondents stated that the discriminator was male, while 34.8 per cent (68) reported that the discriminator was female.³³ This demonstrates that while discrimination against women in the law is a gendered issue, women also engage in discriminatory conduct.

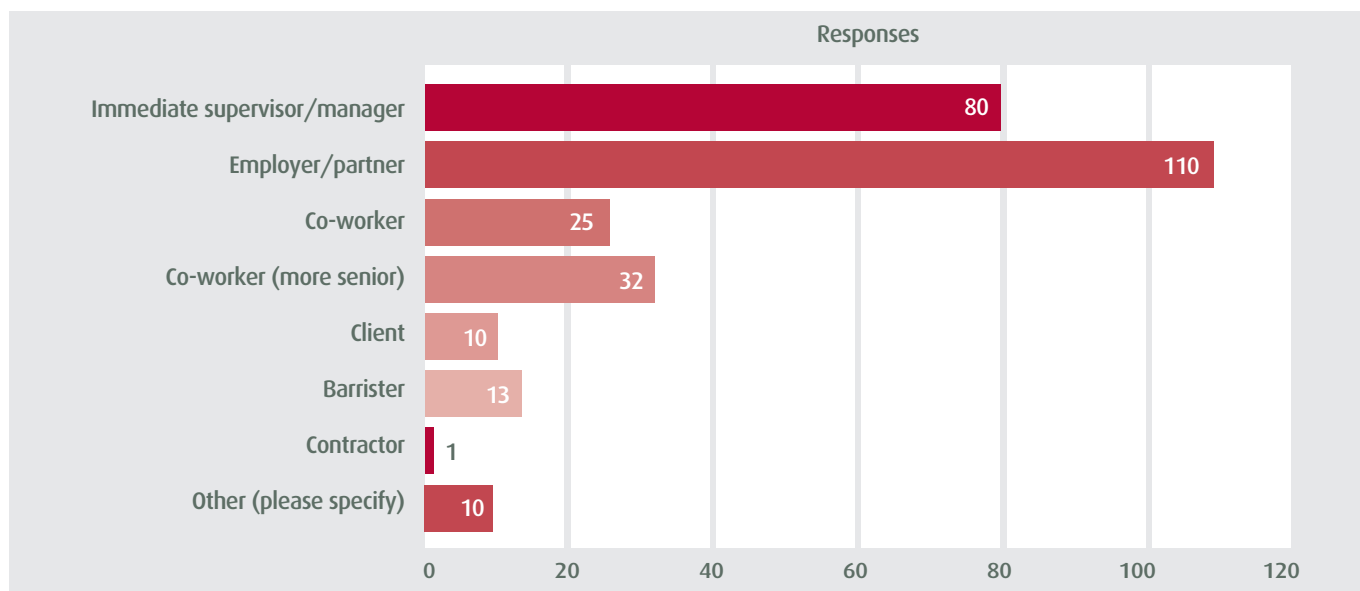
Relationship to the discriminator

199 respondents described the discriminator's relationship to them. Respondents were able to select more than one option if there was more than one discriminator.

Forty per cent (80) indicated that the discriminator was their immediate supervisor/manager, while 55 per cent (110) responded that it was their employer or a partner. Both hold positions of power over the person discriminated against.

Figure 3 provides a breakdown of the relationship of the discriminator to the person discriminated against. Respondents could select more than one response to this question.

Figure 3: relationship between parties



Witnessing discrimination against other women in the workplace

Twenty four per cent of survey respondents reported they were aware of other instances of discrimination (on the basis of pregnancy, breastfeeding, marital status, parental/carer status, sex, sexual orientation or gender identity) against female lawyers in their workplace in the past 12 months.

Many reported witnessing discrimination against pregnant women, or women returning to work after a period of parental leave (especially those returning to work on a part-time basis).³⁴ Other types of discrimination observed in the workplace included the following examples.

Unfair work allocation

Respondents stated:

Lack of transparent opportunities for more challenging work, lack of praise for good work done, women lawyers not being singled out for higher work or more interesting work. Less public praise given to female lawyers for same work done as male lawyers.

Lack of promotion, work allocated to [women that is] not as serious/challenging because it's 'men's work.'

At my former job as a solicitor at a corporate firm, women who returned part time after having children were given lower level work that didn't give them much of an opportunity to learn or work up the career ladder, for example working on precedent instead of client files.

Systemic issues

Other respondents noted systemic issues of discrimination. One stated 'It is happening all the time – there is unspoken discrimination and we women have had to accept it...' Another stated:

'[There is] just a general mood of women being that little bit inferior and not being afforded the same respect... men who were not 'macho' men were treated the same and often dismissed.'

Violence

One respondent reported an incident of violence:

'Female solicitor who was working for a mostly male construction law firm. Treated her horribly and made comments about her gender and how it affected her work. One partner got violent by throwing things near her.'

Other types of sex discrimination

Two respondents reported team celebrations being held at The Melbourne Club, which excludes entry by women.

A team was celebrating the appointment to senior associate of a male colleague. The most junior lawyer in one practice area and the only female lawyer in the team – was not asked to come along. Only when the lawyer went to the team leader and complained was she told that she was not asked because the other senior partner in the team (the eldest and most respected partner in the team) had organised to take them to The Melbourne Club.

Another respondent stated:

Females [are] generally paid less than men in [my] current workplace, especially at higher levels.

Impact of discrimination on women in the law

The preamble of the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) states that discrimination against women:

...violates the principle of the equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity.³⁵

Those who had experienced discrimination outlined the adverse impact this treatment had on their personal lives and careers. Although the responses were varied, four key themes emerged, illustrating the significant impacts that discriminatory conduct can have: on mental health, emotional and behavioural impacts, physical health and on career opportunities.

These responses reflect what the CEDAW made clear – that discrimination not only has an impact on the ability of women to participate in equal terms with men in the workplace, but that the impact is far-reaching, affecting the lives and the health of women more broadly.

Mental health

Many respondents stated that the discriminatory treatment had adverse effects on their mental health. Examples included:

It affected me a lot and I ended up suffering depression and anxiety.

It exacerbated my depression and I was forced to look for new work.

[It] left me with permanent psychological scars.

[It caused] depression, stress, relationship breakdown, financial difficulties, stress on my child.

... It took more than six months for the panic attacks to stop.

Emotional and behavioural impacts

Even where the respondent did not state that they suffered a recognised mental illness, a large number still reported emotional and behavioural impacts of discriminatory treatment. This included loss of confidence and motivation:

I felt incompetent, stupid, embarrassed, inadequate and constantly questioned my abilities as a lawyer.

I felt worthless, stressed and anxious and belittled. I considered giving up the legal profession.

Made me feel ostracised, embarrassed and ashamed.

I lost confidence in myself and had some symptoms of stress, such as difficulty sleeping.

I was deskilled, demotivated, verbally abused, insulted, shouted at in a hostile manner and demeaning manner.

Physical health

A number of respondents also reported adverse health impacts:

... getting sick more frequently and increasing sick leave, weight problems, tension headaches and migraines.

Health issues during the pregnancy and ongoing physical and mental health issues.

Financial impacts

Some respondents stated that the discriminatory treatment affected their job security, that they were paid less than male counterparts, that it caused them to feel deskilled and in some instances the discrimination led to unemployment:

The fact that I was paid less than my male counterparts and the lack of opportunity for advancement was a driving factor in terms of leaving that workplace.

... I was paid less than male employees – [I] asked for more and was told 'no – they are paid more because, well they are men'.

I had to leave my flourishing career as a young government lawyer and public servant because everything ground to a halt and I was still being paid as a graduate even though my secretary was paid more and I was teaching people two levels above me how to do their job.

Career opportunities

Some considered that they had not been recruited for roles based on the discriminatory conduct, while others felt that the discrimination had impacted adversely on their career progression.

[I] was all but officially offered [a] position at [a] law firm and [was] invited to come in for informal coffee with [the] managing partner ... After [the] managing partner was told of [my] arrival, three male employees ... walked through [the] reception area, clearly for the sole purpose of 'checking me out'. [I was] told [the managing partner] couldn't do coffee that day, would call to reschedule [but he] never called back ... I am of a 'large size' but have three years' legal experience and excellent academic marks.

[I] felt as if I had hit a ceiling and was not taken seriously for advancement to partner level. [I] had asked for development coaching but it was not offered for two years after return from maternity leave for a second time.

Denied professional development because I have children...meant that my opportunity for career progression was limited. Loss of future earnings.

... ... I made it to special counsel (the mummy corner) and that was as far as I got. But they still expected me to essentially perform as a partner ... without giving me any ownership of the business.

Discrimination complaints

The survey results indicate that most women who have experienced discrimination while working in the law will not make a complaint.

- 60.8 per cent of respondents who had experienced discrimination stated that they did not make a complaint.³⁶
- In addition, 26.1 per cent of women did not tell or seek help from anyone about the discrimination, not even family and friends.³⁷

This is consistent with research in other sectors where discrimination complaints also go unreported.

Why don't women complain about discrimination?

Respondents who stated they had experienced discrimination but had not made a complaint were asked why they had not done so.

- 57 per cent (69) stated that they did not complain because they did not think that anything would happen if they did.
- 56.1 per cent (68) stated they were concerned that there would be negative repercussions for their career.
- Of these 27 respondents were concerned they would lose career opportunities, while 26 respondents were concerned that complaining would affect their reputation in the legal profession.

What happens when women in the law complain about discrimination?

Survey respondents who did complain were asked about the outcome. The responses to this question provide some insight into why so few women actually complain – it appears that the outcome of a complaint is rarely advantageous for the complainant.

Of the responses, 30.7 per cent (24) indicated that they left their job; 8.9 per cent (seven) stated that the discrimination continued, while 14.1 per cent (11) responded that they suffered other consequences, such as being demoted. Only 2.5 per cent (two) responded that the discrimination stopped after the complaint was made. Another 2.5 per cent (two) responded that although they initially made a complaint, they subsequently withdrew their complaint.

One respondent stated that the reason for this was because:

As a consequence of raising these matters, my performance was criticised unfairly and in a manner that was nit picking. My reputation was damaged and I feared that if I continued I would not be able to secure employment anywhere.

This particular comment also points to the occurrence of victimisation.

Victimisation is also prohibited under the Equal Opportunity Act.³⁸ Victimisation is a situation where a person is subjected or threatened to be subjected to a detriment, because they spoke up about their rights, made a complaint or assisted someone else to make a complaint.

What happens to the discriminators?

Respondents who had made a complaint were then asked what happened to the discriminator/s. The responses show that the perpetrators of discrimination rarely suffer negative consequences as a result of a complaint being made against them.

Of those that responded, just over half stated that nothing happened to the discriminator.³⁹

It is important to note that some workplaces may have actually taken action against the discriminator, yet this action may not have been communicated to the complainant, resulting in them believing that nothing actually happened. Even so this figure is concerning, as the failure to hold a discriminator to account (even if this is just a perception) risks the flow-on effect of creating a culture where discrimination is seen as being condoned.

Drivers of discrimination

Four out of 10 respondents stated that they thought discrimination was part of a broader pattern of behaviour (for example, through workplace culture) in either their current or former workplace.⁴⁰

These respondents were then asked to describe the pattern, culture or experiences they had noticed.

A number of key themes emerged, providing useful indications of the drivers of discrimination against women working in the law.

Male gender stereotypes

Many noted that the legal profession is a male-dominated culture, even though there are more or equal numbers of women in the workplace. A large number of respondents also noted that aggressive, dominant behaviours were valued and rewarded by their workplace. This made it difficult for individuals with a different approach to progress.

It was a blokey culture. Client functions favoured male oriented interests such as golf and football and some clients held all their functions at male-only clubs ...

It was the boys club mentality. Social conversation was generally around male oriented topics. Deals were made over drinks at golf etc...

A culture fostering a 'harden up' approach - that you are weak if you don't want to work ridiculous hours - a pattern of men moving upwards and women just leaving the workplace or switching workplaces.

[There was] a pressure on women to succeed by expecting them basically to behave like traditional men - i.e. commitment to work to the exclusion of all else. This then becomes the benchmark against which employees are 'objectively' measured thereby continuing to embed discrimination.

Aggressive behaviours (rather than positive, teaching behaviours) rewarded. General unconscious bias from many men.

This aligns with the findings of a South Australian study of 12 women lawyers aged under 30.⁴¹ This research found a narrative within the legal profession of 'endurance, total commitment and long hours as a sign of machismo and as something to be celebrated'.⁴²

Participants in the South Australian survey also reported indirect and direct sex discrimination that included 'negative attitudes towards women

advancing in the profession, the persistence of gender stereotypes and the existence of exclusive all male social gatherings'.⁴³

Female gender stereotypes

In addition to masculine cultures described in the survey, respondents also indicated that women in the firm were required to behave in a manner consistent with traditional female stereotypes:

"Women are expected to be attractive and compliant, if assertive we are seen in a negative light [and] our sexuality [is] questioned"

Women lawyers described as 'too aggressive' [are] expected to modify their behaviour to be submissive to male lawyers. [There are] expectations that female lawyers bake cakes for morning tea [and] organise social events...

Female employees [are] usually allocated files in female dominated areas such as personal injury, not given the same opportunities in work allocation and training and promotion as equivalent male employees...

The profession's adherence to stereotypes was discussed in an article in the *New South Wales Law Journal*, which spoke of these attitudes being embedded in systemic practices that allow discrimination to continue.⁴⁴ This included attitudes about how women should dress, speak and engage with or manage others.

*Aggressive or abrasive qualities are not encouraged in women, yet are respected in men. Women may be perceived as fragile or weak and their judgement or competency as a legal practitioner may be questioned as a result. Even matters such as height, voice pitch and tone, and age impact upon attitudes to women.*⁴⁵

Power differentials

A consequence of the traditional, hierarchical structure of some law firms is that ultimate power vests in the partners. As with any institution where power is concentrated in a select few, there is the potential for that power to be misused, with some people feeling frightened to complain or feeling powerless to stop it. This culture can also be difficult to change from outside this select group. This is not to suggest that this occurs in all firms across the legal profession in Victoria. However, it is important to acknowledge the frequency

of women reporting experiences of where an imbalance of power has led to discrimination and, in some instances, harassment. Comments in our survey on this issue included:

Partners wield a lot of power and when they acted in a discriminatory manner towards women it was just brushed off as the partner being 'difficult' or the 'you know what partners are like' mentality.

... young trainees and junior lawyers...bear the brunt of the discrimination and victimisation. Inappropriate behaviour is often dished out from the top down, and...partners 'float on top' without being aware of the issues...

I witnessed the sole female partner in the group of male partners continuously being publicly criticised/yelled at/ mocked, including in front of junior staff and at staff meetings or gatherings.

I know of other females that were bullied by my supervisor, and it tends to be women that don't have prestigious legal connections in her families. They chose their women to bully effectively.

Absence of effective role models

The way that success is defined for partners and for the profession may have the effect of preventing women with significant parenting and caring responsibilities from progressing to the higher levels of the profession. This may then impact on the availability of a diverse range of role models of women in higher positions.

There are no female staff in positions of authority at my workplace. [A]lthough my workplace consists of 75 per cent women, our director is male and our principal solicitor is male. This means that if there is a sensitive issue relating to gender, there is no one to go to.

Within my immediate team the managing partner's general procedure was to allocate any high-end or particularly interesting matters to the male lawyers...the female partner in the team effectively endorsed this culture.

Bosses/decision makers are predominantly male. Opportunities [are] given to men to progress even though women are equally skilled ... blokey attitudes and behaviour [are] rewarded.

Female partners have sacrificed so much themselves that they are often the worst culprits for not supporting other females, as they did it and feel others should do the same.

Promotion opportunities

A definition of success that for some firms is primarily based on a culture of 'presenteeism' and in some circumstances the presence of unconscious bias, may also prevent women from accessing promotional opportunities.⁴⁶

Promotion and reward ... are primarily based on the paradigm of a lawyer who is available 24/7. A part-time worker with caring responsibilities does not fit that paradigm and therefore is not able to access promotion and reward.

I think that there is a general underlying pattern in the law that elevates males professionally. It think this trickles down into the firms at times, as much as there is a conscious effort on the part of the firm to progress women's careers.

It was also commonplace for male lawyers to be advanced at a faster rate than female lawyers, even where the female lawyers were higher achievers.

Women who worked part time also faced particular barriers that related to the culture that values 'presenteeism':

Part time women were openly discussed as a 'problem' ... Part time women were side lined and there was no desire to make it work. Part time women were less valued, paid less and received less interesting work.

... women who worked part time were seen as an administrative burden and a 'cost' to the firm.

Billable hours and expectations

Billable hours as the financial model for law firms was seen as feeding into the culture of presenteeism. This is discussed in Chapter 5 where systemic barriers are considered in more detail.

Leading Practice

Herbert Smith Freehills

Herbert Smith Freehills has adopted a variety of gender strategies in an attempt to create a workplace culture that embraces gender equality.⁴⁷ In Australia, females at Herbert Smith Freehills 'now accounted for 60 per cent of senior associates and attrition rates for males and females are even at all levels, which was not the case 10 years ago.'⁴⁸ The Commission, as part of this project, interviewed Kate Jenkins, a partner in the firm's Employee Relations Group.⁴⁹

Ms Jenkins outlined a range of measures that Herbert Smith Freehills' Australian operation had adopted. This includes a Diversity Committee led by the Chief Executive Officer and two female partners.⁵⁰ The firm first implemented a sexual harassment policy in 1995, since then there has been a steady line to quite sophisticated strategies for addressing gender issues. The firm now has policies on bullying, harassment, discrimination and flexible work. Two diversity managers focus on diversity issues.⁵¹

Ms Jenkins said a key turning point occurred eight years ago when the previous CEO expressed shock at the small number of women making it to partner.⁵² It was a problem, as the firm was not getting the best: 60 per cent of graduates were women but only 13 per cent of those at the top were women. What helped to implement these changes 'was having senior supporters – particularly male supporters for the diversity programs.'⁵³

It was also recently reported that Herbert Smith Freehills promoted a female employee whilst she was pregnant and then offered her partnership while on maternity leave.⁵⁴

Action items

The following are action items that could be implemented by the profession and by individual workplaces to respond to the systemic drivers of discrimination identified in this chapter.

Gender stereotypes and power differentials

For workplaces:

- Develop a positive duty action plan to promote gender equality. The action plan aims to outline clear goals, objectives, outputs, activities, expected outcomes and accountabilities. The action plan should align issues of equal opportunity, flexible work practices and prevention of sexual harassment with the organisations existing values. It should outline the organisation's compliance with the positive duty to eliminate discrimination, sexual harassment and victimisation.
- Develop an internal diversity working group to monitor the progress of the equal opportunity action plan to promote gender equality.
- Ensure that the organisation has policies on equal opportunity, sexual harassment and the accommodation of parental and carer responsibilities.
- Organise for all staff including managers and partners to participate in training on anti-discrimination and unconscious bias training.

For the profession:

- That the Law Institute of Victoria in consultation with law firms, consider the development of a voluntary code for the legal sector – this may include the profile of the firm, periodic reporting on percentage of women in partnership positions, number of employees working flexibly, number of complaints made based on gender, number of discrimination/sexual harassment complaints lodged internally and externally and outcome of complaints. This could also include that firms opt in for complaints to be handled by a panel review that comprises external organisations.
- Develop a communications plan to promote issues of gender equality in the legal profession. This could include publishing articles in the *Law Institute Journal*, holding seminars, making media releases and using social media.
- Develop and promote education programs including: discrimination awareness training - as part of the continuing professional development program.

Absence of effective role models

For workplaces:

- Actively promote the career development of women in partnership, managerial and senior positions.
- Consider adopting a target or quota system for women in leadership positions. It is recommended that any target or quota system should also have a voluntary mentoring program to support the progression of women.
- Include key performance indicators aimed at promoting gender equality with the performance plans of senior leaders and managers.

For the profession:

- Consider developing sector wide targets or quotas for women in leadership positions. Stakeholders to explore Australian Stock Exchange model for voluntary/compulsory quotas of the percentage of women at partnership levels.

Chapter 3:

Accommodating parental and carer responsibilities

Main findings

Of 421 survey respondents:

- 35.4 per cent (149) made a request for their employer to accommodate their responsibilities as a parent or carer.
- Of the women who made requests, almost three-quarters asked for flexible hours of work, while almost half requested to work from home.
- Of those that reported the result of their request, less than five per cent had their request refused.
- 79 per cent had their request approved in full, another 16 per cent had their request partially approved.

Equal Opportunity Act protections

Over the past 30 years, there has been an enormous increase in the number of women entering the paid workforce, reflecting both economic imperatives and changing social norms.⁵⁵ The law has also witnessed a seismic shift in the gender profile of the profession. Almost half of Australia's lawyers are now women.⁵⁶

Despite this increase in workforce participation in the law and across the economy, women continue to carry the greater responsibility for caring and other unpaid work.

With the high rates of women participating in the Australian workforce, their ongoing contribution to the nation's gross domestic product, as well as their contribution as unpaid caregivers and parents, the economic importance of a legal framework to accommodate parental and carer responsibilities cannot be understated.

Sections 17 and 19 of the *Equal Opportunity Act 2010* stipulate that employers must not unreasonably refuse to accommodate an employee's parental or carer responsibilities in relation to work arrangements. This also applies to persons offered employment by the employer.

In determining what is reasonable a range of facts and circumstances must be considered. These include:

- the employee's circumstances, including the nature of his/her responsibilities as a carer or parent
- the nature of the employee's role
- the nature of the arrangements required to accommodate those responsibilities
- the financial circumstances of the employer
- the size and nature of the workplace and the employers business
- the effect on the workplace and the employer's business of accommodating those responsibilities
- the consequences for the employer of making such accommodation
- the consequences for the employee of not making such an accommodation.

In addition to these legal obligations, progressive employers recognise the productivity benefits of accommodating parental and carer responsibilities.⁵⁷ Paid parental leave and flexible working hours help in both attracting and retaining talented employees, 'especially women, and protect the significant investment that organisations make in recruiting, training and developing employees'.⁵⁸ These practices are 'crucial to reducing staff turnover and cutting the cost of having to replace experienced employees'.⁵⁹ In addition, investments in this area are returned through lower absenteeism, better morale, as well as improved productivity.⁶⁰

Survey results

Of 421 survey respondents:

- 35.4 per cent made a request for their employer to accommodate their responsibilities as a parent or carer

Of those that made a request for their employer to accommodate their responsibilities as a parent or carer:

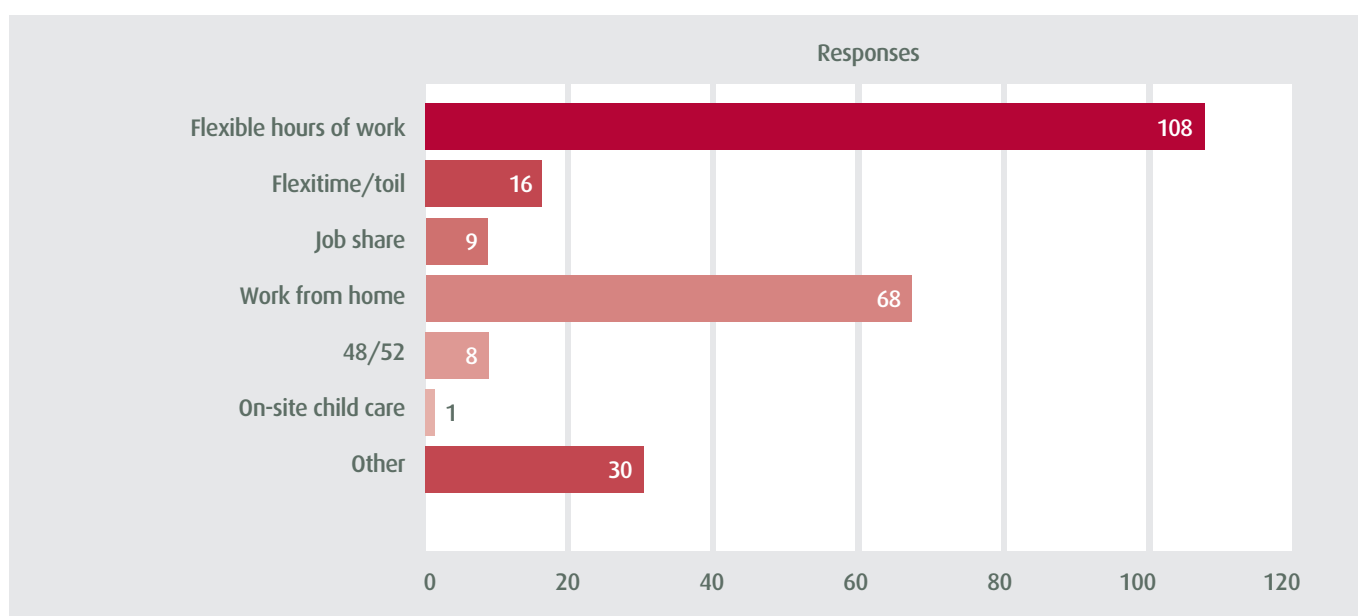
- 78.4 per cent (116) had parental responsibilities
- 11.5 per cent (17) had carer responsibilities
- 10.1 per cent (15) had both parental and carer responsibilities.⁶¹

One third of survey participants had never made such as request, the remainder stated that this was not applicable to them.

Nature of the request

Of the women who made requests, 72.4 per cent (108) asked for flexible hours of work, while 45.6 (68) requested to work from home. Figure 4 describes the range of requests made.

Figure 4: range of requests



Outcome of the request

Of the 146 who reported the outcome of their request to accommodate parental and/or carer responsibilities:

- 78.8 per cent (115) stated that their request was approved
- 16.4 per cent (24) stated that their request was partially approved
- 2.7 per cent (4) stated that their request was considered but not approved and
- 2.1 per cent (3) stated that their request was immediately refused.

Of those who responded that their request was partially or completely approved:

- 32.4 per cent (24) worked in a law firm with 200 + lawyers
- 22.9 per cent (17) worked in a law firm with 101-200 lawyers

- 8.1 per cent (6) worked in a law firm with 51- 100 lawyers
- 4 per cent (3) worked in a law firm with 31- 50 lawyers
- 9.4 per cent (7) worked in a law firm with 11- 30 lawyers
- 20.2 per cent (15) worked in a law firm with 2 – 10 lawyers.
- One worked with a sole practitioner.

When compared to the survey sample this data suggests a small under- representation of requests being approved in firms with 200 or more lawyers and a small over representation in firms with 101- 200 lawyers. There was no significant variation between the sample size in other sized firms.⁶²

When asked to elaborate on the outcome of their request, (this included if the request was approved or not) respondents reported responses that ranged from outright hostility, lack of support or pressure to increase their work hours, while others felt devalued.

Hostility

For those who felt as though their request was treated with hostility, comments included:

All I was asking was to start work at 9.30am instead of 9am. From then on the hostility directed at me outweighed the benefit of the late start. I wished I had never asked at all.

I was told yes but then on the day I needed to go to hospital I was told I couldn't because I needed to do x, y and z. On the days when I did go to hospital, I was rung constantly and obsessively with trivial matters that had been waiting for weeks for the partner to attend to and could have waited for more weeks.

Flexible arrangements 'if not refused, then accommodated begrudgingly and the employee expected to work unpaid overtime to make up for it. It is entrenched.

I was not refused when I asked if I could perhaps work from home one or two days a week. However, I was not encouraged to pursue it. I was advised of some of the difficulties I would encounter ... [including] that my work colleagues would not have the benefit of my presence at work to consult with.

Lack of support

Others reported experiencing a lack of support from the organisation and their managers.

Management was not supportive and tried to limit [the] timeframe and extent of flexible working arrangement. [I] Feel like [the arrangements] will stifle career advancement.

Pressure to work more hours

For many respondents there was on-going pressure to work extra hours or they were expected to cram more work into the days that they were at work:

Allowed to work three days, however constant pressure to consider four days.

I am paid for four days a week, but invariably work five. I have been refused payment for the fifth day...

Devalued

Some women reported that by working flexibly their work was devalued by management and colleagues:

I am no longer a 'team player' because I cannot work the hours.

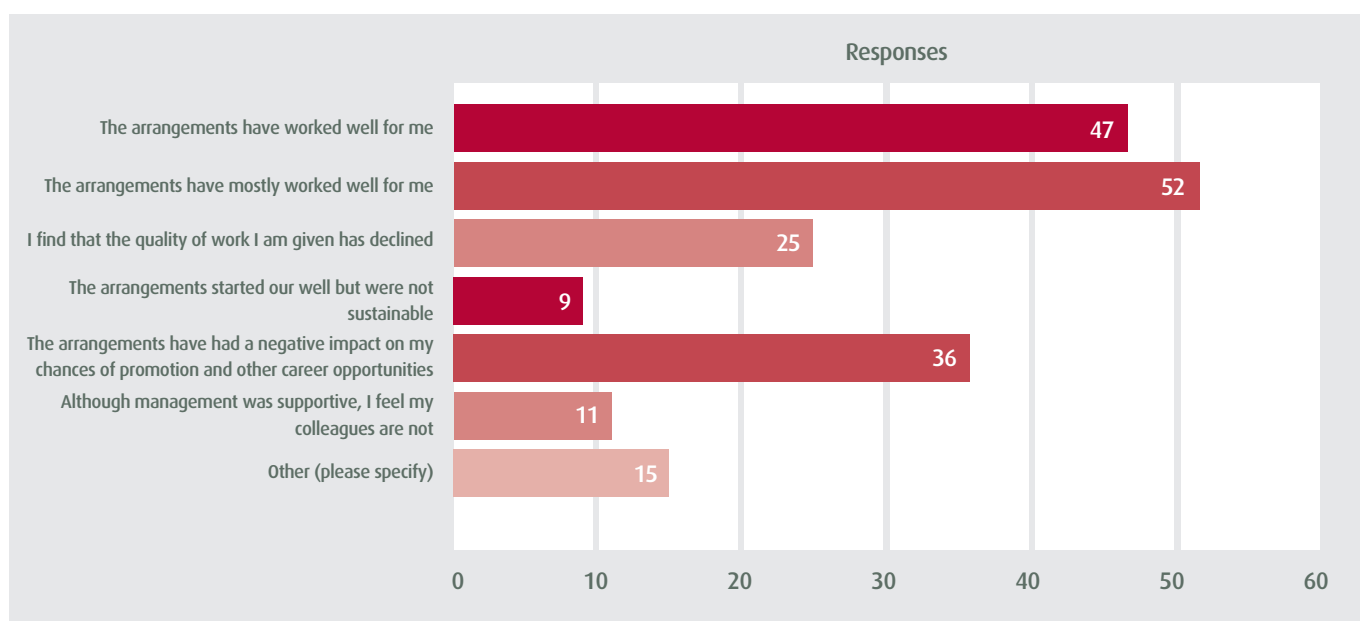
I feel that I have lost chances of promotion and lost career opportunities...[But this is due to] the general culture of the profession rather than my employer that results in the loss to me.

How have the flexible arrangements worked in reality?

Of the 139 respondents who responded to the question of how the flexible arrangements worked in reality, 37.4 per cent (52) said that the arrangement had mostly worked well, 33.8 per cent (47) reported that the arrangements worked well, while 25.8 per cent (36) said that the arrangement had a negative effect.

Figure 5 describes the outcomes of flexible work arrangements. Respondents could give more than one answer.

Figure 5: outcomes of flexible work arrangements



Barriers for women

Lack of flexible working arrangements

A recent report conducted by the Law Society of New South Wales, found that a major barrier to women's advancement in the legal profession was the limited availability of flexible work arrangements coupled with the difficulties in returning to work after a long leave of absence.⁶³ Our survey confirms this finding.

Some of the experiences reported to the Commission included:

Flexible work arrangements being withdrawn from mothers – they have been told to increase their hours at work or leave [the] firm.

My old team now has no part-time lawyers working within it upon the recent change of management.

Numerous women have been denied promotion and denied flexible working arrangements.

Two female workers who were hired in a job share role were recently terminated when they refused to break up the job share arrangement and increase their number of hours from three days per week to four days per week. Due to child care commitments, they were unable to increase their hours and because they refused to increase their hours, they were terminated.

Partners in firms leaving to go on maternity leave and coming back to no clients and the firm not assisting them to re-establish their client base.

The NSW study identified that women required greater assistance when returning to work after maternity leave, as the leave of absence generally had an impact on their level of confidence including their legal knowledge and career networks. The support during this time was crucial in their retention and advancement.⁶⁴

Attitudes towards working mothers

Throughout the survey, women with parental and carer responsibilities cited negative attitudes towards these responsibilities as both a barrier to their progression and ongoing employment within firms. Some respondents described that not only did they need to contend with the practical realities of work arrangements, but also faced biased attitudes that questioned their level of commitment and made them feel devalued.

This is also confirmed in other studies that have reported that it is 'not just the time off on maternity leave that has an impact but the many assumptions made about mothers' commitment and levels of ambition.'⁶⁵

Comments from our survey included:

I overheard partners say that it was a waste of time for women to work three days a week when they had kids ... There is no doubt that females are wary of getting pregnant too early in their careers because they are worried it might jeopardise their promotion prospects and ability to get good work. Women with children find it is much harder to get good interesting work.

When a colleague informed her female manager she was engaged, she was told not to consider having children for a minimum of five years. It was implied that a decision to have children sooner would affect her ability to get good work and a promotion.

...women who return from maternity leave or go part-time to take care of children – even women who simply need to arrive later or leave early due to childcare commitments – are frequently denied career advancement roles, or are given sideways 'promotions' that [take] them out of competition for 'men's' jobs. Often the 'billable hours' line is used to justify this movement.

Making flexible working arrangements a non gendered issue

Research by the Diversity Council Australia (DCA) found that flexibility is an important productivity lever, with business benefits of:

- 'enabling businesses to be sustainable and adaptable to change
- providing a pathway to gender equality
- assisting with talent attraction and retention and
- improving workplace productivity.'⁶⁷

The DCA research demonstrates a clear link between flexibility and productivity, stating that even though there have been some advances, there is still a gap between career progression and flexible work. In particular the DCA urged organisations to 'mainstream quality flexible work and careers as standard business practice that it is available to "everyone at all levels" so that flexible work is no longer seen as a just a 'women's issue'.⁶⁸

Other commentators agree, contending that 'women would only have it all when men were offered the same flexibility at work so that they could be equally involved parents without hurting their careers.'⁶⁹ These sentiments were echoed by our survey respondents:

I think there would be a big cultural change if more men started to ask for flexible work arrangements to look after their children. This would also reduce the burden on women.

[C]arers responsibilities extend beyond being a woman's problem. When my husband gains flexibility as well it helps me to have the time I need. When the men I work with are able to work flexibly they will appreciate the responsibilities of their colleagues.

For cultural change to take place genuine commitment is required, particularly from the leaders in the workplace. As one survey participant noted:

The workplace needs to make a commitment to gender equity. As part of this, there needs to be a firm-wide assessment and evaluation of part-time/flexible work arrangements. As part of this assessment, strategies need to be developed to ensure that, to the extent possible, work quality does not decline and opportunities for promotion and reward are not diminished. There needs to be a conscious and committed assessment of these arrangements and how to improve them because, if the dominant culture does not change, these arrangements are unlikely to lead to [successful] career outcomes.

There is still a significant disadvantage in the legal profession..... but real change will only come when managing partners stop obsessing about short term financial results and start introducing effective flexible work options and other initiatives to help women stay in work through different stages of their lives and continue to succeed.... Short term it may cost money, but long term, in terms of talent maximisation, retention and the like you have got to assume that this is not going to cost money over time... You look at the cost of turnover, loss of knowledge, loss connection with clients.... There are a lot of dollar signs.⁶⁶

Models of billing

As discussed elsewhere in this report, the business model of billable hours generated a wide range of responses in the research. This is discussed further in Chapter 5 where systemic barriers are considered in more detail.

Workplace solutions

Many respondents articulated practical changes that would help to build both a culture and practice of flexibility. These included:

- stay in touch whilst on leave
- help with returning from parental leave
- extra pay or time in lieu for hours worked outside agreed hours
- be more open about job-sharing
- allow working from home
- better remote access to office systems
- career planning for women who take time out or work part-time
- more transparent arrangements for career opportunities and allocation of interesting/valued work
- quality of work and promotion opportunities need to be considered for employees on flexible work arrangements
- provide mentors and management opportunities to develop skills to apply for promotions
- educate staff about the challenges of working part-time. This would assist with the cultural change needed regarding the 'negative level of commitment perceived to be had by part-timers'. This should occur independently and not be the responsibility of those working part-time (who may be perceived as biased). 'The dialogue needs to be had with someone who is objective and can counsel other individuals on the benefits of these types of arrangements for all staff'.
- on-site or sector based childcare.

Other suggestions that came out of the study from the Law Society of New South Wales that are relevant include:

- publishing 'information to assist practitioners and employees who are considering flexible working arrangements'.⁷⁰
- consider the 'needs of staff returning to work after career breaks, including rebuilding their client base or reskilling'. This may include developing continuing professional development (CPD) training for practitioners returning to work after parental leave and other absences or to 'invite staff on parental or other leave to attend CPD and other events'.⁷¹

Leading Practice

Norton Rose

The Commission spoke to Sally Macindoe, partner, Head of Diversity and National Team Leader of Environment and Planning at Norton Rose.⁷²

Ms Macindoe said at Norton Rose a range of practical strategies have been implemented to promote gender equality and flexible work practices more broadly. This includes an overarching diversity strategy with a clear agenda each annum, key performance indicators for management around retaining and promoting women within the firm, gender targets (including for partnership), pay equity audits, unconscious bias training and a flexible work toolkit. The flexible work toolkit is not just about policy, it is also about educating supervisors and staff around flexible work conditions. The firm is constantly implementing practical measures to make flexible work conditions workable for all team members.

At Norton Rose the percentage of women in partnership has risen from nine per cent back in 2005 to around 23 per cent in 2012. Around 25 per cent have successful flexible work arrangements and approximately 65 per cent of women have successful return to work strategies following parental leave (based on returning to work for over 12 months).⁷³

At Norton Rose, the real catalyst for change in relation to promoting gender equality and flexible work practices occurred when a business case was prepared, costed and communicated to partners which made clear the real business impact of failing to retain and promote women (50 per cent of the firm's talent pool).

Action Items

The following are action items that could be implemented by the profession and individual workplaces to respond to the systemic barriers identified in this chapter.

Failure to accommodate parental responsibilities

For workplaces:

- Ensure that the organisation has a clear policy on the accommodation of parental and carer responsibilities.
- Encourage flexible work practice for both men and women.
- Educate staff members about the challenges of working flexible hours and develop strategies to build team support for this.
- Review the organisation on a regular basis to consider practical strategies to support flexible work practices.

For the profession:

- Develop and promote education programs including discrimination awareness training (in which failure to accommodate parental and carer responsibilities is a component) - as part of the Continuing Professional Development program (CPD).
- Develop an information exchange on best practice which could provide firms with an opportunity to share information, resources and to discuss challenges and successes.
- Develop a communications plan to promote issues of gender equality, including the accommodation of flexible work practices in the legal profession. This could include publishing articles in the *Law Institute Journal*, holding seminars, making media releases and using social media.

Returning to work after career breaks (including parental leave)

For workplaces:

- Provide career planning opportunities for employees who take time out to work part time.
- Maintain contact with staff whilst on parental leave (with the employees permission). This can assist staff to retain files on their return to stay connected with the organisation and to maintain confidence levels.
- Consider the needs of staff returning to work after career breaks, including rebuilding their client base or reskilling. This may include developing continuing professional development training for practitioners returning to work after parental leave and other absences or to invite staff on parental or other leave to attend CPD and other events.

For the profession:

- Develop and promote education programs including:
- 'Return to Work' planning – this may include education programs, workshops, seminars to assist employers and employees to manage prolonged absences from the workplace.
- Develop an information exchange on best practice which could provide firms with an opportunity to share information, resources and to discuss challenges and successes (including on successful return to work planning).

Chapter 4: Sexual harassment

Main findings

- One hundred survey respondents (23.9 per cent) stated that they had experienced sexual harassment whilst working as a lawyer or legal trainee in Victoria.
- Another 48 were aware of instances of sexual harassment that had happened to other female lawyers in their workplace in the last 12 months.
- Sexual harassment was likely to occur in the early stages of employment with 63 per cent of incidents occurring within the first 12 months of working in the workplace.
- Two-thirds of those who had experienced sexual harassment did not complain.
- Twenty-nine per cent did not tell anyone at all.

What is sexual harassment?

In Victoria, sexual harassment is against the law in a range of contexts, including in employment. Sections 92 and 93 of the Equal Opportunity Act defines sexual harassment as unwelcome conduct of a sexual nature which could be expected to make a person feel offended, humiliated or intimidated. The unwelcome sexual behaviour could be physical, spoken or written. There are a range of behaviours that may constitute sexual harassment including:

- requests for sex
- comments about a person's private life or the way they look
- sexually suggestive behaviour, such as leering or staring
- brushing up against someone, touching, fondling or hugging
- sexually suggestive comments or jokes
- displaying offensive screen savers, photos, calendars or objects
- repeated requests to go out

- sexually explicit emails, text messages or social networking sites
- sexual assault, indecent exposure.⁷⁴

Employers are legally responsible for acts of sexual harassment by their employees or agents that occur in the workplace or in connection with a person's employment, unless they can show they have taken reasonable precautions to prevent such acts. Sexual harassment may include conduct that occurs at the work premises, at work-related events, or between people sharing the same workplace.

In Victoria, employers have a positive duty to take reasonable and proportionate measures to eliminate sexual harassment as far as possible.⁷⁵

Survey results

Twenty-four per cent of those surveyed had experienced sexual harassment whilst working as a lawyer or legal trainee in Victoria.⁷⁶

The most common conduct included:

- 67.2 per cent (76) had experienced sexually suggestive comments or jokes (in person or via email, SMS or other social media)
- 44.3 per cent (50) had experienced intrusive questions about their private life or physical appearance that were offensive
- 41.6 per cent (47) had experienced unwelcome or inappropriate physical contact
- 38.9 per cent (44) had experienced unwelcome staring or leering that was intimidating.⁷⁷

Witnessing or being aware of instances of sexual harassment

Forty-eight (11.6 per cent) of respondents to the Commission's survey stated that they were aware of instances of sexual harassment that have happened to other female lawyers in their workplace in the last 12 months. When asked

what they had witnessed, respondents reported behaviour that included ‘rating’ the attractiveness of female colleagues; partners ‘grooming’ female colleagues for sexual encounters; inappropriate behaviour at Christmas parties and circulation of sexually explicit emails about female employees.

The survey results are consistent with recent research by the Australian Human Rights Commission which found that 13 per cent of respondents aged 15 years and older had witnessed sexual harassment in the workplace firsthand or been informed about it subsequently.⁷⁸ There is also increasing evidence to suggest that witnesses of sexual harassment are also experiencing levels of both stress and distress that are consistent with those that are the direct victims of the harassment.⁷⁹

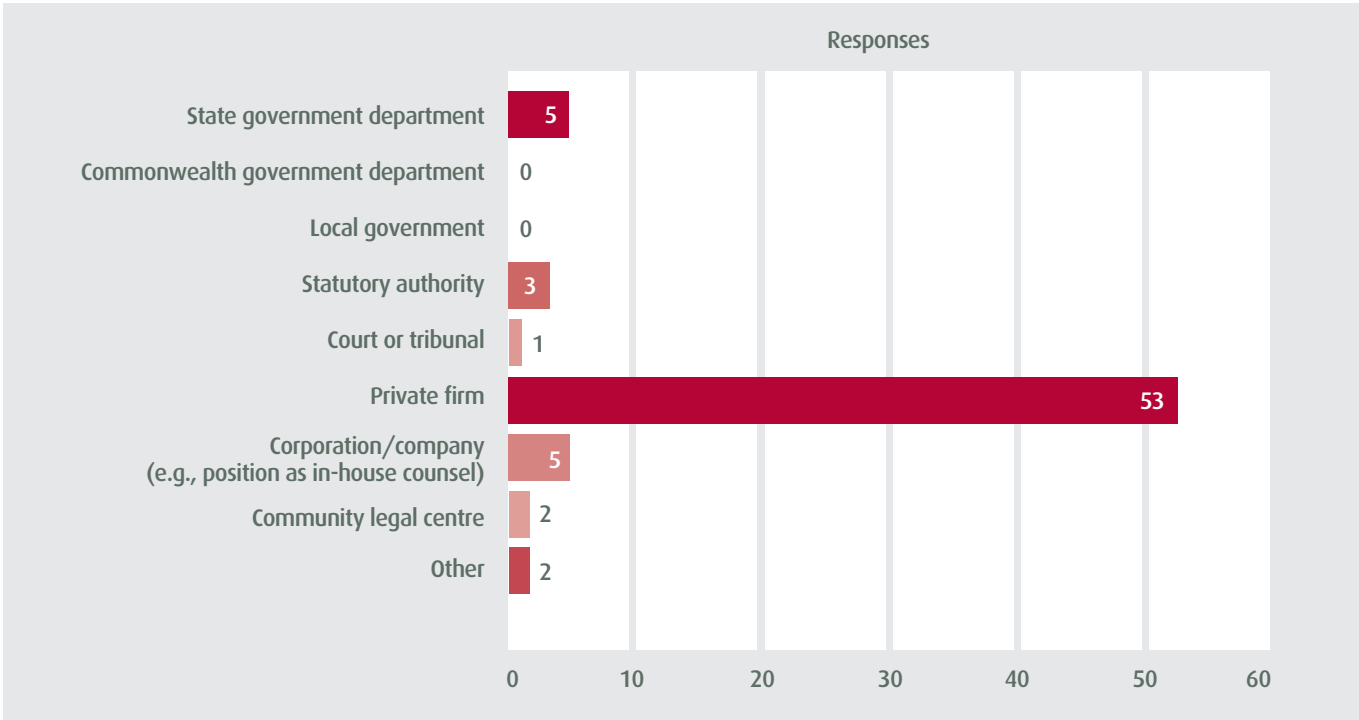
Where is sexual harassment occurring?

Of the 101 people who responded to the question of where the harassment occurred, 27.7 per cent stated that the sexual harassment occurred in their current workplace, while approximately 72.3 per cent stated that the harassment occurred in their former workplace.

Figure 6 outlines the types of workplaces of the 71 people who responded that the sexual harassment had occurred in their former workplace.

When compared to the survey sample this data suggests a small under representation of sexual harassment occurring in law firms with 200 or more lawyers and 100 to 200 lawyers, and a small over representation in firms with 50 to 100 lawyers, 30 to 50 lawyers and 11 to 30 lawyers. There was no significant variation between the sample size in other sized firms.⁸⁰

Figure 6: types of workplace where sexual harassment occurred



When is sexual harassment occurring?

The research found that sexual harassment was most likely to occur in the early stages of employment, with more than six out of 10 incidents occurring within the first 12 months of working at the workplace.⁸¹ More than 30 per cent reported that they had been working for more than 12 months but for less than five years when the sexual harassment occurred.

This is likely to relate to the power imbalance that underpins sexual harassment. Generally, the less amount of time that a person is employed at a workplace, the younger they are, and the less established their reputation is within the workplace, then they are more likely to be in a position of vulnerability. This vulnerability may also make it more difficult to challenge the harasser’s behaviour.

Who were the alleged harassers?

97 per cent of respondents stated that the alleged harasser was male, while approximately three per cent stated that the harasser was female. Fifty-two per cent of respondents also reported that there was more than one harasser.⁸²

These findings are consistent with other studies. For example, a study into formal complaints of sexual harassment lodged with human rights commissions across Australia, found that 89 per cent of alleged harassers were male, while nine per cent were female.⁸³ Similarly, a recent national survey found that 90 per cent of women reported that their harasser was male.⁸⁴

The response rate indicates that this issue is gendered in nature, and is often one that reflects broader workplace cultural practices and tolerance for this behaviour.

Relationship between the alleged harasser and the survey respondent

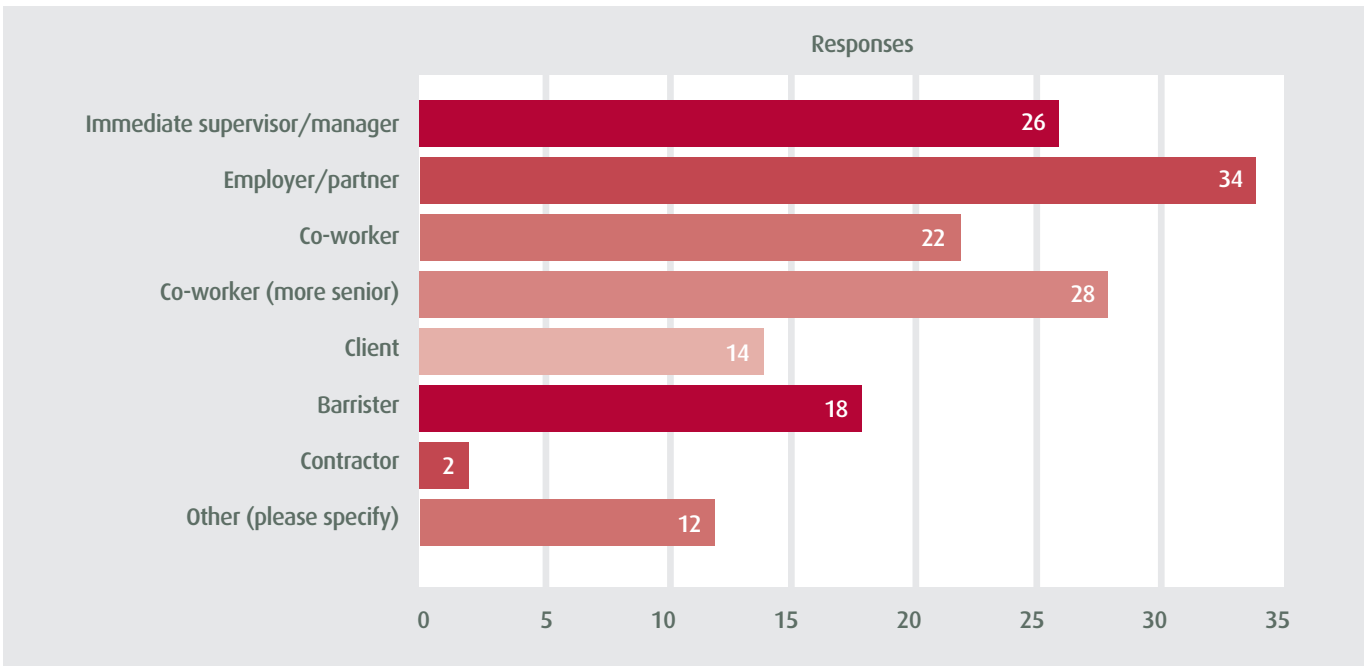
The relationship between the alleged harasser and the survey respondents reflects the unequal power relations between them.

- Seventy eight per cent (88) reported that the harasser(s) held more senior positions within the workplace as either their immediate supervisor (23 per cent), employer/ partner (30 per cent) or a more senior co-worker (24.7 per cent).⁸⁵
- Another 32 women (28.2 per cent) reported that the harassers were clients or barristers, who also arguably occupy a position of power over employees of a legal firm or workplace.⁸⁶

Figure 7 details the relationship between the alleged harasser and the respondent:

This is consistent with complaints data from human rights commissions across all Australian jurisdictions, which shows that complainants are more likely to report they were harassed by someone in a more senior position than a co-worker. This was particularly the case for female complainants who were more likely to report that they were harassed by someone in a more senior position than male complainants.⁸⁷

Figure 7: relationship between alleged harasser and respondent



Reporting sexual harassment

Of the respondents who answered the question of whether they had made a complaint, 66 per cent (74) reported they did not make a complaint. Around 12 per cent complained to their manager or supervisor. Six per cent told their employer or a partner at the firm.

Figure 8 outlines to whom they reported the harassment. Respondents could give more than one answer.

Often the first response after a disclosure can influence the future actions of the complainants. As such it is important to have some understanding of whom complainants are likely to disclose their experiences even if they do not formally complain.

Of the 169 responses to the question of whether they had told anyone or sought help from anyone about the sexual harassment, 29.2 per cent (33) responded that they had not told anyone about the harassment. Respondents could provide more than one answer.

Of those that had told someone, 37 had told a family member or friend, 32 told a colleague and 24 told their manager or supervisor.

Figure 8: to whom harassment was reported

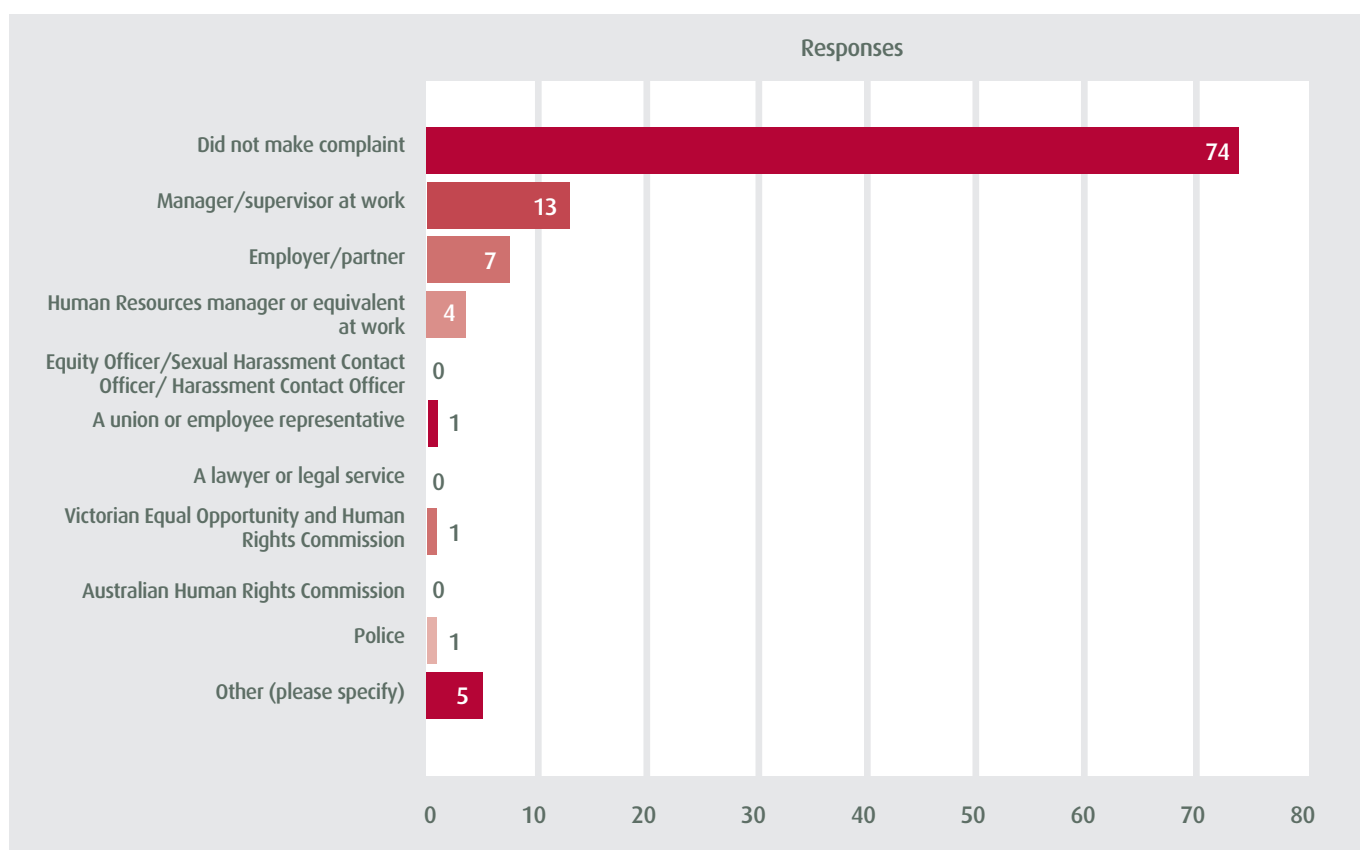


Figure 9: who was told about harassment

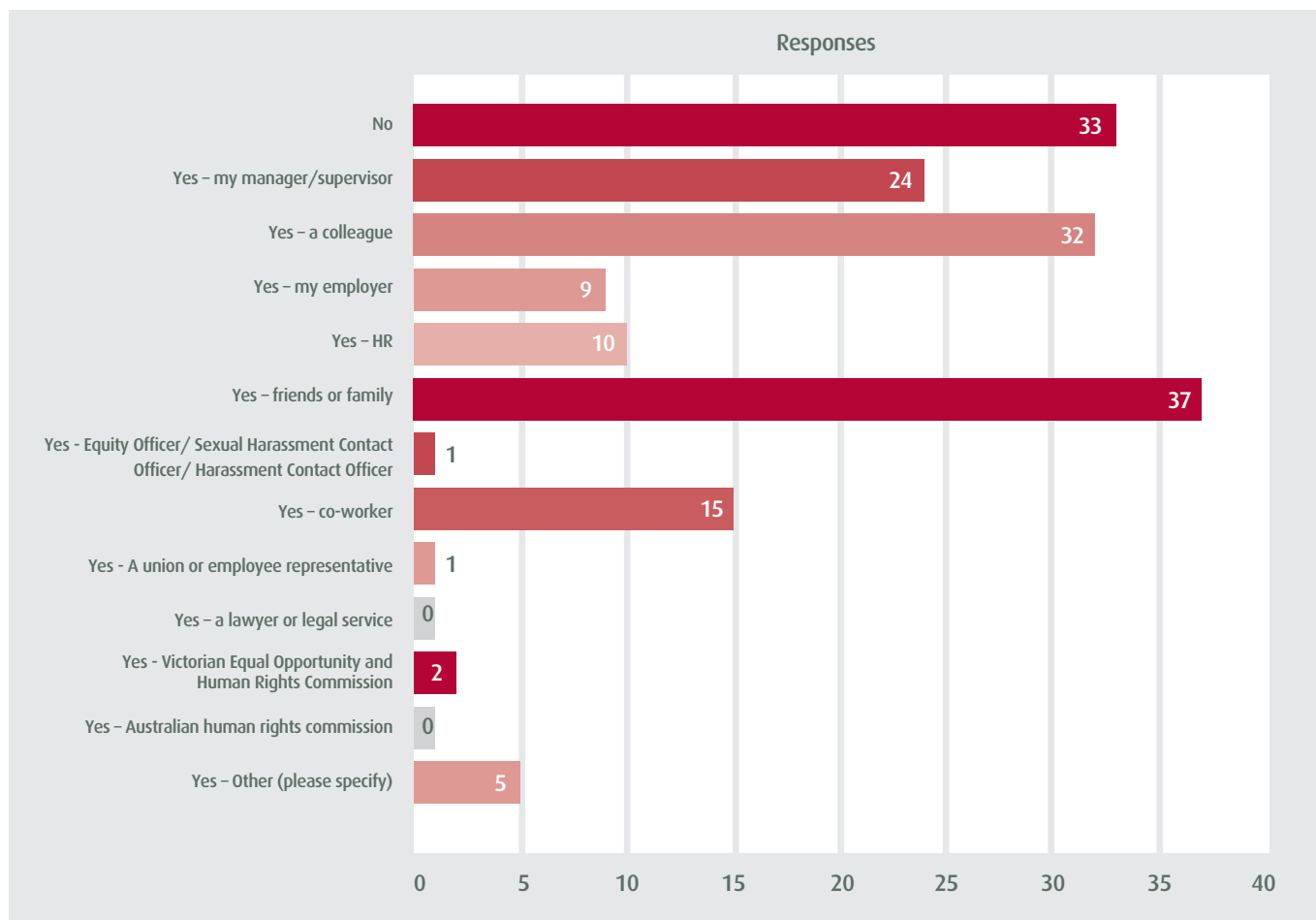


Figure 9 provides a breakdown of to whom they disclosed the harassment. Respondents could provide more than one answer.

The media coverage of high-profile sexual harassment cases may also have an impact on reporting rates. The manner in which these cases are reported can send a powerful message to the community as to whether this behaviour is tolerated or condemned. It may also provide other victims with the courage to take on their harassers. This was the effect of the high profile sexual harassment case of *Kristy Fraser-Kirk v David Jones* [2010].⁸⁸

The Australian Human Rights Commission indicated that during the period of July to December 2010 sexual harassment accounted for more than 30 per cent of all complaints.⁸⁹

Kristy Fraser-Kirk v David Jones was ‘...being discussed in workplaces and by women across the country. It has made women more aware of sexual harassment laws and their rights.’⁹⁰ The case was settled out of court with a payment of \$850,000.

Why don't people complain?

There are many reasons why people do not make complaints. These vary depending on individual circumstances and the broader organisational culture. These may include fear of retribution, fear of publicity, lack of awareness, drawing adverse attention to themselves and ineffective responses and remedies.⁹¹

Reporting sexual harassment can be both a daunting and confronting experience for complainants. Complainants may be concerned that they may not be believed or they may have feelings of embarrassment, guilt, shame, trauma and stigma.⁹²

I was an articled clerk and he was pretty senior. I didn't mention it as, at the time, it was the sort of thing that people joked about and you were supposed to take it in your stride.

The behaviour was pretty openly displayed and accepted by all. I felt uncomfortable about it but as a graduate there was not much I could do and the behaviour seemed to be tolerated at the top.

Of the 74 survey respondents who did not make a complaint (respondents could provide more than one answer):

- 38 did not think that anything would happen so there was no point complaining
- 30 did not think the matter was serious enough to warrant a complaint
- 8 felt that the complaint process was too daunting
- 6 did not think they would be believed
- 3 did not know how or where to make a complaint
- 3 were too scared or frightened to make a complaint, and
- 1 was told that if they complained they would lose their job or suffer other negative repercussions.

Forty-five per cent (33) said that they were concerned there would be negative repercussions for their career. Of these:

- 25 were concerned that their reputation in the legal profession would be jeopardised
- 22 were fearful they would lose career opportunities
- 16 were fearful they would be ostracised in the workplace
- 3 were fearful they would be demoted, while one respondent was fearful that she would be transferred.

Complaint outcome

Of the 31 responses that outlined the outcome of their complaint, positive outcomes included that:

- 10 reported that the harassment stopped
- 7 reported that they received an apology
- 2 stated that the complaint led to their employer making changes to the workplace to prevent sexual harassment in the future
- 1 respondent received compensation.

The remaining survey respondents did not receive favourable outcomes:

- 2 responded that the harassment continued
- 2 responded that they were victimised for making a complaint
- 2 responded that the complaint was not accepted
- 2 responded that they left their job
- 1 respondent withdrew their complaint
- 1 responded that they suffered another detriment
- 1 responded that the complaint had not yet been finalised.

What happened to the alleged harasser?

Holding the harasser to account is important. It can provide the complainant with a sense of justice and closure, and can establish clear boundaries of what is considered acceptable workplace behaviour. It may also stop future incidents.

Of those survey respondents who made a complaint, three out of 10 reported that nothing happened to the alleged harasser.

Figure 10 outlines the survey responses.⁹³

Respondents described a lack of action as contributing to a broader workplace culture that condoned sexual harassment.

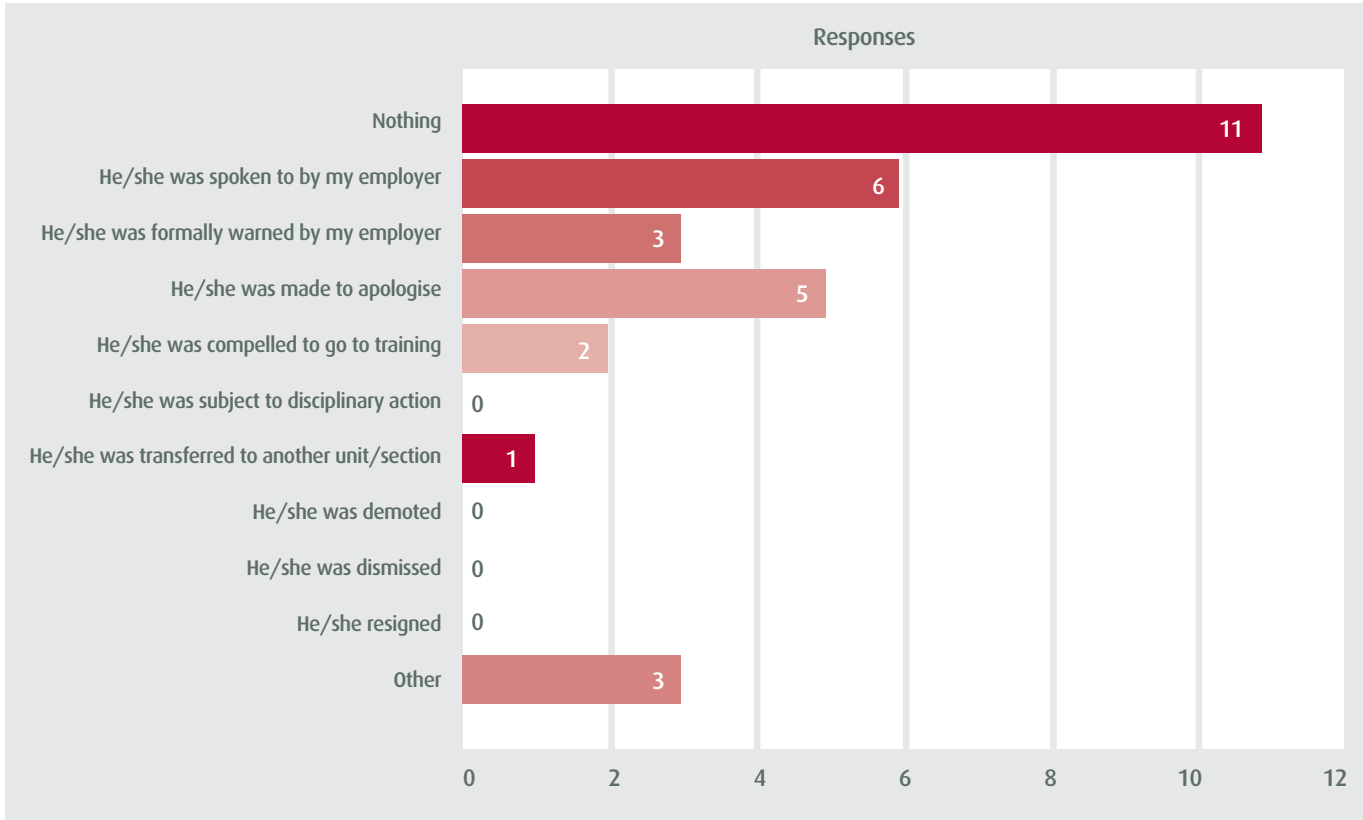
- No action when people complained of harassment.
- ...no one seemed to actively prevent it or follow up on the problem.
- There were no repercussions and no one complained.
- Rewarding women who did not make waves.

There were instances where reporting complaints led to further victimisation.

- Sexual harassment of a final year law student. Student made complaint to me as the immediate supervisor and then I followed this up. As a result I was demoted and the final year law student withdrew her complaint.
- The partner who was in charge of bullying/harassment for the firm was one of the worst perpetrators of sexual harassment – often referring to women subordinates as ‘artwork’ if they were attractive and making derogatory comments about those who were not.

Although complaint processes and the details of this process are confidential, there are ways that this information can be managed in order to send a broader message to the workplace about unacceptable conduct. A lack of any visible consequences risks a dangerous effect on workplace norms as it can inadvertently send a message that the organisation supports the behaviour.

Figure 10: outcome of complaint



Impact of sexual harassment on women lawyers

The negative impacts of sexual harassment on workplaces are well documented, with evidence demonstrating the significant costs to workplaces in terms of reduced morale, absenteeism, cost of investigations, higher staff attrition rates as well as reputation damage.⁹⁴

Similarly the personal impacts of sexual harassment are well understood, with victims experiencing consequences that may include severe mental health issues, physical health and also work/economic related consequences.⁹⁵

This can range from anxiety to depression, post-traumatic stress disorder, lower job satisfaction, absenteeism, to leaving the workplace.

The responses to the Commission's survey reflect this existing body of evidence.

Respondents reported suffering from anxiety, depression, feelings of worthlessness and loss of confidence and self-esteem as result of experiencing sexual harassment. One respondent even reported feeling suicidal as a result:

Profound damage. Sought psychiatric care on recommendation from the GP.

[I] felt embarrassed, ashamed and like I had done something wrong. I also suffered depression and anxiety as a result.

I found I could not work due to anxiety, constantly wondering what would happen next. Suffered from depression. Lost self esteem, wondered why I was working in the legal field.

The incident occurred during the time I was applying for articles. I was unsuccessful with a particular firm, and went to get feedback on why I had been unsuccessful. The partner who gave me feedback kept asking me, 'what would you do to work at our firm? How far would you go?' It was quite clear from the look on his face what he was saying and his knee was touching mine. I chose to deliberately misunderstand him and I said 'I will write a legal essay on any topic you choose'. He repeated the question, and I said 'choose your topic'. At the time, unfortunately I was suffering from severe depression (then untreated but now treated) and this incident made me feel suicidal. I felt dirty, and like I'd never get a job unless I acceded to sexual pressure.

Respondents also reported feeling unsafe, uncomfortable, angry, sad, disappointed and demoralised.

It has made me feel unsafe at work and at home.

Under threat, infantile, scared. At a disadvantage when negotiating things.

'Uncomfortable walking to the tea room (I feel like I am strutting across a bar), made me feel conscious of my physical appearance/tightness of clothes'.

I constantly had to watch what I was wearing, for fear of comment and criticism, even though this had nothing to do with my performance at work.

A number of respondents stated that the harassment made them question whether they wanted to continue to work in the legal profession at all.

I decided to never work in private practice.

I would never work for a top/middle tier law firm again'.

Other respondents reported leaving their workplace as a result of the harassment.

One respondent described the harassment as causing her to feel isolated, uncomfortable and eventually led to her leaving the firm.

I was an articled clerk in a regional area and had relocated away from home. I had no family or old friends in the town. The harassment made me feel very alone and regularly made me feel very uncomfortable. The harassment started as a 'joking' nature directed at me and I felt that I had to 'laugh along' otherwise I might be excluded from the friendship group within the firm or be considered to be a 'difficult' or prudish person. The harasser was a long-standing, senior lawyer in the firm and I felt if I complained the partners might prefer not to employ me after my articled clerkship was completed so that 'peace' was restored rather than to address the matter...The harassment progressively got worse and less 'joking' and it came to a point that I felt I could no longer work at that firm...I left the firm as soon as I could.

Drivers of sexual harassment

Sexual harassment 'is a form of sex discrimination and usually a manifestation of gender-based violence.'⁹⁶ The United Nation's *Declaration on the Elimination of Violence against Women* defines violence against women as:

'Any act of gendered based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life'.⁹⁷

Victoria's *Action Plan to Address Violence against Women and Children* also identifies sexual harassment as a form of violence against women.⁹⁸

The key determinants and contributing factors to the perpetration of violence against women include:

- unequal power relationships between men and women
- adherence to rigid gender stereotypes, and
- broader cultures of violence.⁹⁹

Unequal power relationships between men and women

In our survey, unequal power relationships between the harasser and the woman working was quite often identified as the driver of the sexual harassment:

Classic situation of superior using their status to coerce the more vulnerable junior staff members.

The partners have a boys' club – they can do anything – they are in charge and have all the power ...

...some older male lawyers...try to exploit their position of seniority amongst junior lawyers... and try to foster (very false!) 'mentoring' relationships with younger female lawyers.

There were instances of senior males behaving inappropriately towards young females, either by subjecting them to inappropriate staring or making lewd or slightly off-colour comment.

I have observed a culture of sexual harassment by both men and women in large corporate firms, particularly around social events. I have observed sleazy male and female senior associates and partners get away with unlawful conduct simply because of their seniority. To junior lawyers, they can be very intimidating. Who would be crazy enough to challenge a senior associate or partner at a law firm? You

risk ruining your personal and professional reputation as your name is dragged through the mud and the firm does everything possible to manage its own reputation.

Adherence to gender stereotypes

Survey responses outlined the existence of male dominated cultures that supported sexually harassing behaviour, while others pointed to the adherence of traditional gender stereotypes as providing justification for this type of behaviour. The operation of similar stereotypes (about men and women) were also reported as contributing to sex discrimination generally.

Importantly, 'male dominated settings where cultural norms are associated with sexual bravado...and where the denigration of feminine behaviours is sanctioned' are associated with an increased likelihood of sexual harassment.¹⁰⁰

Research has also demonstrated that sexual harassment is more prevalent in organisations that have a lower sensitivity to balancing work and personal responsibilities, reinforcing the notion that sexual harassment is in itself a manifestation of sex discrimination.¹⁰¹

Respondents' comments that identified the adherence of gender stereotypes as problematic included that:

In my previous workplace, there was a general 'boys' club' culture. Women were expected to dress a certain way and if they didn't or were too 'masculine' they were whispered about ... if women didn't take [the harassment] well, they would be told to lighten up and were then excluded from all the social elements of the firm. For example, I didn't tolerate the jokes, so was simply ignored and never spoken to or invited to any drinks, etc.

Sense of entitlement by senior public officials who expected women, and particularly young women, to accept what in fact was sexual harassment, as normal male behaviour towards women.

Middle aged men (the lawyers) constantly referring to female staff's (administrative staff) looks, etc. Meant to be good-natured, but absolutely entrenched sexist behaviour.

Sexual harassment as normalised behaviour

For some respondents sexual harassment in the workplace was pervasive, frequent and normalised. Others reported that harassment was not an isolated incident perpetrated by an individual employee, but rather a pattern of

behaviour that was entrenched in the cultural practices of the firm.¹⁰²

Of the 103 people who responded to the survey question about the frequency of the harassment:

- 52.4 per cent (54) stated that the harassment was sporadic
- 24.3 per cent (25) stated that the harassment was a one-off
- 23.3 per cent (24) stated that the harassment was ongoing.

This demonstrates that for the majority of female lawyers that experience sexual harassment (75.7 per cent), they experienced it on more than one occasion.

Twenty nine per cent of survey respondents were also able to link the sexual harassment to a broader pattern of behaviour within their workplace.

When asked to think about how pervasive the sexual harassment was in their workplace, of the 53 people that responded to this question:

- 35.8 per cent responded that sexual harassment occurs sometimes in their workplace.
- 28 per cent responded that sexual harassment was rare in their workplace, while 20.8 per cent responded that such behaviour was very rare.
- 15.1 per cent responded that sexual harassment was either common or very common in their workplace.

One respondent described sexual harassment as being 'so common as to become part of the furniture.'

Another said:

There is a definite 'pattern' or culture of sexual harassment – not at all overt, but very much lurking beneath the surface. I've never been 'slapped on the ass' or leered at obviously, but there is a clear element of sexualisation when male lawyers/partners label myself and other female lawyers 'the girls' and make very subtle comments about appearance... There is certainly no overt or inappropriate touching, rather an insidious culture of 'boys' versus 'girls'.

Another respondent stated she had observed:

Repeated instances of inappropriate comments and innuendo, including personal comments about colleagues' appearance, family members, and partners. This type of inappropriate language is commonplace and accepted as the norm.

Other comments included that:

Entrenched culture of sexism with little or no attempt by the organisation to change attitudes.

...suggestions and looks are subtle enough that you would be made to feel like you are over-reacting if you made an issue out of them.

There is a firm culture of 'oh he is just drunk, just a sleaze, just stay away from him'.

...people knew of the poor sexually harassing behaviour of a senior associate but he was still promoted to partner...

Preventing sexual harassment

An Australian Research Council Project found that in order to prevent sexual harassment there needed to be a comprehensive, whole of organisation approach.¹⁰³

This approach involves:

- developing and monitoring 'good' policy (that is policy that is visible, raises awareness of rights, presented to new employees at induction, is refreshed and has clear grievance process)
- dissemination and communication of the policy
- effective training (including for management)
- promoting standards of behaviour through discussion, leadership and modelling of behaviour
- key contact officers
- promotion of bystander responses, and
- responsive assertive grievance handling.¹⁰⁴

Evidence also suggests that bystanders can play an important role in preventing sexual harassment in the workplace, when support for bystanders is integrated into a comprehensive framework of prevention efforts.¹⁰⁵ Thus, bystander education in the workplace could 'teach people to interrupt incidents of sexual harassment or the situations which lead to harassment, to challenge perpetrators and potential perpetrators, to provide support to potential and actual victims and to speak out against the social norms and the inequalities supportive of sexual harassment.'¹⁰⁶

Other research on the prevention of violence against women more broadly, makes it clear that there needs to be a range of mutually reinforcing strategies that are implemented at multiple levels of influence, including at the individual, organisational and societal level.¹⁰⁷

Action items

The following are action items that could be implemented by stakeholders and workplaces to respond to systemic drivers of sexual harassment identified in this chapter.

Unequal power relations between men and women

Note: these recommendations are similar to recommendations in Chapter 2 – gender stereotypes/ power differentials).

For workplaces:

- Develop a positive duty action plan to promote gender equality. The action plan aims to outline clear goals, objectives, outputs, activities, expected outcomes and accountabilities. The action plan should align issues of equal opportunity, flexible work practices and prevention of sexual harassment with the organisations existing values. It should outline the organisations compliance with the positive duty to eliminate discrimination, sexual harassment and victimisation.
- Develop an internal diversity working group to monitor the progress of the equal opportunity action plan to promote gender equality.

For the profession:

- In consultation with law firms, consider the development of a voluntary code for the legal sector – this may include the profile of the firm, periodic reporting on percentage of women in partnership positions, number of employees working flexibly, number of complaints made based on gender, number of discrimination/ sexual harassment complaints lodged internally and externally, outcome of complaints. This could also include that firms opt in for complaints to be handled by a panel review that comprises external organisations.
- Develop a communications plan to promote issues of gender equality and awareness of sexual harassment in the legal profession. This could include publishing articles in the Law Institute Journal, holding seminars, making media releases and using social media.

Sexual harassment as normalised behaviour

For workplaces:

- Ensure that the organisation has policies on sexual harassment.
- Ensure that the organisation has clear, accessible complaint processes in place and that these processes are adhered to when complaints are made.
- Organise for all staff including partners and managers to participate in training on sexual harassment, this is to include bystander education.
- Consider how the organisation can share both good news and bad news stories at work conference and functions. This may include lunchtime seminars or a leadership series where experiences are shared.

For the profession:

- Develop and promote education programs including sexual harassment training – as part of the continuing professional development program.

Chapter 5:

Systemic barriers to gender equality – the profession

Main findings

- Female law graduates can expect to earn 3.8 per cent less than their male colleagues, while special counsel/consultant positions have a 7.8 per cent pay differential.¹⁰⁸
- Issues that contribute to the gender pay gap include gender discrimination, the undervaluation of women's work, pay setting methods, occupational and industrial segregation, lack of investment in women through training and development and career breaks (including returning to work from maternity leave).¹⁰⁹
- A lawyer's commitment to the firm was in some cases measured by their visibility, that is how many hours they were seen to put in, creating a culture that valued 'presenteeism'. This perception has adverse impacts for women as it is not conducive to working flexible hours, or to working from home or remote locations.¹¹⁰
- Billable hours was cited by some respondents as a barrier to progression within the profession and was used to justify gender discrimination. Billable hours may in some circumstances, operate as a barrier to women (and men) whose work hours and patterns may require flexibility based on their parental or carer responsibilities.

Of all the workplaces, it might be expected that with their concern for legal compliance, legal practices should have led the employment field in providing improved opportunities and conducive work and learning policies. However, results from the wider study suggest that this is not necessarily the case.¹¹¹

Do law graduates have reasonable expectations?

With the increased rate of women graduating from law schools coupled with high attrition rates, questions have been asked as to whether graduates are entering the profession with certain expectations from law school, and whether these expectations are failing to translate into experience.¹¹²

Research in Western Australia that was cited in a New South Wales report, found that a number of respondents had concluded that the 'law had been a poor career choice given their interests and aptitudes.' The West Australian report recommended that the legal profession 'be clear about the attitudes and aptitudes it believes are necessary for good lawyers.'¹¹³

As part of our research the Commission conducted a focus group for women who had left the legal profession. The group discussed reasons for leaving the profession, specific incidents of sexual harassment, discrimination and workplace bullying, broader workplace cultural issues, role models in the profession, expectations formed at law school and some recommendations for going forward.¹¹⁴ One of the questions asked was whether law schools fostered certain expectations, and whether these expectations were different in reality.

Responses included:

*When you decide to study law you have very honourable notions. But I never fully appreciated that there would be an equal opposite whose job it would be to simply win the case in the most combative of ways. You aren't prepared for the adversarial nature of law.*¹¹⁵

*At university the adversarial nature of the law needs to be exposed.*¹¹⁶

Factors impacting on progression and retention

Gender pay gap

In May 2012 the national pay differential between average male and female weekly earnings was 17.5 per cent.¹¹⁷ In Victoria, the gender pay gap at that time was 15.4 per cent (an increase of the gap by 1.4 per cent since the previous year).¹¹⁸

The pay gap was considerably larger in the private sector at 20.8 per cent compared with 13.2 per cent in the public sector.¹¹⁹ The gender pay gap for the Professional, Scientific and Technical Services industry which includes both Legal and Accounting Services was even higher at 27.1 per cent.¹²⁰

In the legal profession, the largest pay gap was seen for those working in Special Counsel/Consultant positions, where women earned on average 7.8 per cent less than their male counterparts across participating law firms, while women working as Senior Associates earned on average 3.1 per cent less than their male counterparts.¹²¹

This pay gap starts at the beginning of a women's career, with data indicating that the average starting salary for male graduates in the legal profession was \$52,000 but just \$50,000 for female graduates. This is a starting pay gap of 3.8 per cent.¹²² One clear consequence of this pay gap is the reduced capacity of women to accumulate wealth over time.

Issues that contribute to the gender pay gap include discrimination, the undervaluation of women's work, pay-setting methods, occupational and industrial segregation, lack of investment in women through training and development and career breaks (including returning to work from maternity leave).¹²³

Research has also demonstrated that the longer someone is away on maternity leave, the larger the fall in earnings.¹²⁴

Benefits of pay equity

There is increasing evidence to indicate that pay equity and fair remuneration practices have direct business benefits. These include:

- reduced staff turnover, as well as lower absenteeism
- reduced risk of legal claims under discrimination legislation
- broader talent pool
- compliance with the law, including the new equal remuneration provisions in the federal *Fair Work Act 2009*
- increased financial performance.¹²⁵

Some employers have recognised the benefits that pay equity has to their businesses and have started to implement approaches that are considered innovative, 'such as continuing to pay superannuation while their employees are on unpaid parental leave, or making sure they are eligible for salary reviews whilst on leave.'¹²⁶

Work/life balance

This is about society's attitudes too, not just law firms. But law firms are still way behind the rest of society; some are positively Dickensian and male chauvinist in their attitudes to [flexible working arrangements].

Effecting a work-life balance has been accepted as a way forward for women in the legal profession, yet how to attain this balance remains a challenge.

The term work/life balance has assumed a 'gender hue', because 'life tends to be associated with feminised role of caring for others, particularly children.'¹²⁷

Therefore, to achieve greater equality in the workplace, men also need to assume greater responsibility for caring and work-life balance needs to be recognised as much as a men's issue as a women's issue.

Another barrier is the perception or stereotype of what is the 'ideal lawyer'. As noted by one commentator '....the unencumbered worker is the worker who you know will go far. The model is one in which he is assumed to be able to slough off relational ties in order to devote himself unconditionally to work.'¹²⁸

The Commission's survey found that some women are putting off having children until they are in partnership positions.¹²⁹ As noted in Chapter 3, others reported that the take up of flexible work practices impeded their work careers as the type and quality of work declined.

My branch manager is supportive of parental roles, however, does not seem to promote those who have parental roles.

Hours of work and the billable hours model

Previous studies have found that lawyers work longer than the average working hours.¹³⁰ It has been noted that 'the hours worked by solicitors are the result of cultural, structural and economic influences with the legal profession. For instance, the emphasis on billable hours as a way to organise work, income and rewards is a major factor underpinning individual workloads.'¹³¹

Other reports have indicated that 'the culture of workaholism has become so ingrained that there is a predisposition towards imbalance in the levels of partners.'¹³²

As outlined in Chapter 2 and 3, although billable hours model is a fundamental structure of the profession, it can also create barriers if it is employed without engaging with women around their carer responsibilities.

This has arguably led to the embedding of systemic disadvantage for women in the profession.¹³³

The working hours at my former workplace would make it almost impossible to have children and do well at work... Those women who did return part time after having children were not really seen as part of the firm, more there to do fill in work.

Some commentators argue that there is also no clear correlation between the quality of the work performed and the hours that are performed, and that the billable hours model may in effect be counterproductive by penalising productive and efficient staff.¹³⁴

[There is a] focus on billable hours rather than [the] quality of work, skills and intelligence of person.

One respondent noted that there should be '[l]ess focus on chargeable hours, more focus on what I add to the firm rather than strict financial criteria'. Another stated that 'We shouldn't value the quality of work/contribution solely by the number of hours physically in the office. I am more efficient now (after having children and working part time) than I ever was as a full-time worker, yet I have had a substantial pay cut'.

Others said:

Law firms need to seriously adapt to provide genuine guilt free flexibility for both males and females. If organisations ensure that resourcing is sufficient to ensure that all employees can work reasonable hours this will help reduce the guilt women and part-time workers experience when they have to leave at a reasonable hour.... Law firms should employ more staff even if this means that, on average, each employee bills one hour less a day but works reasonable hours. Even if partners' profits [are] marginally reduced in the short term, in the longer term profits will increase due to the fact that the firm will engender loyalty and will benefit because the staff turnover will reduce and thus corporate knowledge retained.

Law firms need to be more flexible with billable targets and provide reduced targets for those lawyers who add more value to the firm in ways other than just billing (i.e. mentoring, training, presentations and gaining new work). There is too much emphasis on billing when the other components of being a good lawyers [are] equally important for the lawyer's development and for the long term success of the firm. Further, the fact that billing is so transparent this should lend itself neatly to employees being able to get paid a pro-rata salary to bill a pro-rata number of billable hours with ultimate flexibility. As long as a lawyer is keeping the client happy and completing the required billable units, law firms should allow the lawyer to have autonomy over where and when the work is performed ...

However, the survey also indicates that there are some firms that are successful in making this business model compatible with flexible work practices, with some suggesting that billable hours has no impact on working flexibly as the billable hours are adjusted to the amount of hours that they work.

Further there are other knowledge-based industries where clients pay per hour for expertise, the legal profession could look to these industries for suggestions on how to adapt to the changing needs and make up of the workforce.

Market imperative

A highly competitive market for legal services arguably also drives high expectations about how many hours a lawyer must work. 'Australia has a disproportionate number of large law firms with a limited corporate client base'.¹³⁵ This results in some firms being aggressively competitive to maximise their profits. When this approach is coupled with a 'particularly rigid and conservative environment'¹³⁶ the outcome may be a workplace 'that could be unsympathetic to female professionals.'¹³⁷

Leadership pathways

'Law firms had become predominantly female workplaces, but the partnerships remained an anomaly.'¹³⁸

The Australian Financial Review (AFR) Partnership Survey reported that the average rate of female partners at surveyed firms was between 20 and 21 per cent.¹³⁹

Women from the profession have attributed these low numbers of women in partnerships to workplace culture, adding that those who had succeeded 'have done so in spite of the culture not because of it'.¹⁴⁰

Figure 11, based on the AFR survey set out the top 10 firms with the highest percentage of female partners as at July 2012.¹⁴¹ Nine out of 10 of the firms listed have offices in Melbourne.

Figure 11 – Top 10 legal firms with highest percentage of female partners

Firms (Including Australian offices only)	Female partners	Total Partners	Female per cent
Gilbert & Tobin (Melbourne Sydney, Perth)	25	67	37.3 per cent
TressCox (Melbourne Sydney, and Brisbane)	12	36	33.3 per cent
Lander & Rogers (Melbourne & Sydney)	18	55	32.7 per cent
Holding Redlich (Melbourne, Sydney and Brisbane)	18	59	30.5 per cent
Henry Davis York (Sydney and Brisbane)	16	54	29.6 per cent
Hall & Wilcox (Melbourne)	10	35	28.6 per cent
HopgoodGanim (Brisbane)	7	27	25.9 per cent
Hunt & Hunt (Melbourne, Sydney, Brisbane, Adelaide, Perth, Hobart, Darwin)	15	59	25.4 per cent
Maddocks (Melbourne, Sydney, Canberra)	17	67	25.4 per cent
King & Wood Mallesons (Melbourne, Sydney, Perth, Brisbane, Canberra)	40	158	25.3 per cent

The AFR survey found that the best promoters of women are smaller partnerships. Nine out of the top 10 firms, in which more than 25 per cent of their partners were women, had between 27 and 67 partners.¹⁴²

Some media commentary has attributed the absence of larger law firms in these results to the cultural practices and the current business model.

Larger firms tend to have a different focus on particular practice groups some of which require lawyers to be a '24/7 partner, available at the whim of the client, and it's not so family friendly'...¹⁴³ If you are going to have a sustainable improvement on the trajectory to getting to 50/50 in partnerships you have got to cut pretty deep into your current operating model...¹⁴⁴ If large law firms say 'we believe in gender equality' but a particular group run by a few partners couldn't give a rat's about it, and aren't giving flexible work practice to their people, but they are making a lot of money, no one will hold them to account because ultimately the dollar is good.¹⁴⁵

Attrition

The *Scoping Study for an Attrition Study of Victorian Lawyers* (Scoping Study) was released in July 2010.¹⁴⁶ Previous research had suggested a large flow of solicitors out of individual law firms, with some evidence that those exiting private practice were disproportionately women.¹⁴⁷ As discussed above, this may be linked to women's greater share of childcare and caring responsibilities, as well as some of the other systemic barriers.

In order to ascertain attrition rates, the Scoping Study reviewed the Legal Service Board Practising Certificate Data.¹⁴⁸ The analysis of the data resulted in three main findings:

1. 'There is a significant rate of attrition from legal practice requiring a practising certificate in Victoria. By 2007/08:
 - more than a third who held an employee practising certificate in 1998 as their first practising certificate (36 per cent) no longer held a practising certificate.
 - a fifth of those who held an employee practising certificate in 2003/04 as their first practising certificate no longer held a practising certificate.¹⁴⁹

2. Attrition from legal practice requiring a practising certificate is higher for women than for men, though still significant for men. By 2007/08:

- 41 per cent of women and 31 per cent of men who held an employee practising certificate in 1998 as their first practising certificate no longer held a practising certificate.
- 23 per cent of women and 14 per cent of men who held an employee practising certificate in 2003/04 as their first practising certificate no longer held a practising certificate.¹⁵⁰

3. The pathways within legal practice show difference by gender. Women were more likely than men to remain in roles where only an employee-practising certificate is required, while men were more likely to move to roles where a principal practising certificate is required. By 2007/08, of those who remained in legal practice requiring a practising certificate:

- 24 per cent of women and 45 per cent of men who held an employee practising certificate in 1998 as their first practising certificate held a principal practising certificate, while 43 per cent of women and 26 per cent of men still held an employee practising certificate. i.e. men are more likely to progress to partnership levels while women are more likely to remain as employees.
- 18 per cent of women and 24 per cent of men who held an employee practising certificate in 2003/04 as their first practising certificate held a principal practising certificate, while 66 per cent of women and 58 per cent of men still held an employee practising certificate.¹⁵¹

The Scoping Study also cited two previous reports by the Law Institute of Victoria and Victorian Women Lawyers in 2006, as well as a report by Aequus Partners in 2005.¹⁵² These reports contended that 'the attrition of women lawyers is seen to reflect the poor practices of law firms, especially long hours, poor record with flexibility, discrimination in career progression as well as the broader gender culture of the profession'.¹⁵³

Findings from the Commission's focus group

In response to the question of why they had left the law/private practice, women said:

Large commercial firm, really great work. Left for a range of reasons. Young child. Expectations that you're just constantly available, billable targets – no understanding of anything outside this. A very masculine set of values.

Got shifted because she was a victim of sexual harassment. Overall culture of law is masculine.

At the firm she found there was a culture of 'blokeyness'. After she got engaged, she was sat down by one of the partners and told that she'll have to think about balancing her work now that she'll be married.

Gendered issues at the bar. At the bar readers' class – one of the people in the course said 'what are you doing here,' her response was 'I'm going to the bar' and he said 'Oh another skirt.' Issue around whether you would get the same number of briefs as a female barrister.

The focus group was also asked what they thought needed to change in the profession. Responses included:

Mentors would really assist. Having people out there 'gunning for you and saying you are valuable to us.'

Stop having meetings at table top dancing venues. This kind of stuff needs to stop. But leadership needs to come from the top, there needs to be an overall cultural change.¹⁶²

Need to be more women taking on strong leadership roles.

Lessons from international research: structural barriers in the profession in the United Kingdom

While the Commission's study has predominantly focused on the experiences of Victorian women working in the legal profession, the experiences of women working in other common law jurisdictions are remarkably similar, making the recommendations for systemic change from those jurisdictions particularly relevant.

Recently, research was commissioned by the Legal Services Board (responsible for overseeing the regulation of lawyers in England and Wales), in response to persistent structural inequalities within the profession such as pay disparity and unequal status, resulting in women leaving the profession in high numbers. This qualitative study included both women and black and minority ethnic lawyers at different points in their career, from a range of sectors and locations to investigate the reasons for the career patterns.¹⁵⁴

The study found:

- the fragmentation of the profession and consequent nuanced nature of respondents experience
- the legacy of the profession's white, male elitist origins and the significance of cultural stereotypes
- importance for career success of personal relationship/ bonding and socialising
- long hours culture and emphasis on commitment (rarely defined)
- the lack of transparency of some key produce and practice in some organisation.¹⁵⁵

It also found that the profession is perceived as '... inherently masculine in character in the sense of its working patterns and general culture, and further characterised by (possibly unwitting) biases against non-white professional and those drawn from lower socio-economic groups'.¹⁵⁶

Another UK study looked at how women and black and ethnic minority lawyers experience the profession in terms of career opportunities and barriers, structural conditions that they faced, and what strategies they adopted to develop and maintain their careers and whether they were able to adapt or reform.¹⁵⁷

Sixty nine respondents participated in semi-structured interviews. From the data three broad structural issues were identified:

1. quantifying commitment: long, unpredictable hours and high billing targets
2. rain-making: developing and sustaining profitable client relations
3. informality and lack of transparency in the promotion process.¹⁵⁸

The study then looked at different strategies used to navigate these structural barriers. ¹⁵⁹

The majority of the sample used strategies that aimed to help their survival and advancement in the current system, while only a small minority (mainly older women in more secure positions) used strategies that challenged the existing system and attempted to reform it to make it more accommodating for others. ¹⁶⁰

This study is of particular relevance as many of the barriers identified are similar to those found in our research. The different strategies that individuals in the UK study adopted to cope with the structural barriers are also of relevance, as many of the experiences provided by women working in the legal profession in Victoria could be characterised into those six coping strategies.

Leading Practice

The Commission interviewed Fiona McLeay, Executive Director of the Public Interest Law Clearing House as part of the research. It was reported that 70 per cent of employees at the Public Interest Law Clearing House (PILCH) were women and that there had almost always been a female executive director. There have also been three instances where the executive director role was job shared by two women. At PILCH part-time hours vary from nine-day fortnights to one day per week. In Fiona's experience 'women who return to work part time are very organised, pragmatic and are a great resource to the organisation'.¹⁶¹ Although she acknowledges that there are some practicalities that need to be finessed, as an organisation this can be effectively dealt with.

Action items

The following are action items that could be implemented by the profession to respond to systemic barriers identified in this chapter.

Gender pay gap

For the profession:

- Collect data and publish an annual report card on the state of Victoria's legal sector in the *Law Institute Journal*. This is to include statistics on participation rates, attrition rate, leadership levels, gender pay gap. These reports could be supplemented by the diversity figures for individual practices, this would help to assist to identify problem areas and could also provide potential recruits and clients with access to diversity information.

Work/Life balance

For the profession:

- Progress research on different business models of billing. Stimulate debate in the legal profession about appropriateness of the billable hours framework and the profession's culture of equating long hours with productivity and profitability.
- Publish guidance to support individual law firms to develop a business case for change.

Leadership Pathways

For the profession:

- Promote available peer mentoring programs to increase participation rates. This includes the:
- Law Institute of Victoria's Mentoring Program.
- Victorian Women's Lawyers Mentoring Program.

Attrition

For the profession:

- Produce tools to assist law firms to measure the cost of staff attrition.

Chapter 6: Moving forward

– recommended actions for employers

The research attempted to hear directly from women about their experiences of working in the legal profession in Victoria, to identify issues regarding causation and to assist with solutions moving forward. Despite the limitations of this research, some clear themes have emerged that have informed the development of a checklist of practical steps that organisations can take to achieve gender equality (based on current leading practice) and the Commission's recommendations for future change. This checklist also provides some guidance on how the positive duty to eliminate discrimination, sexual harassment and victimisations may operate in the context of the legal sector.

It is clear from the research that for change to be effective, long-term and sustainable, it needs to occur on a number of levels. This includes at the sector-wide level, at the organisational level and on the individual level. It is also clear that the adoption of one strategy alone is not sufficient to effect the change required to address the issues of discrimination, accommodation of parental and carer responsibility and sexual harassment.

The following checklist is based on the Commission's literature review of existing evidence, empirical data from the survey respondents and leading practice interviews, as well as the project's Critical Friends group.

Checklist for Action

Leadership level

- ☐ The Chief Executive Officers and the Senior Management team are openly committed to promoting gender equality within the workplace.
- ☐ Consider developing an organisation based business case for change. This business case is promoted within the leadership group.
- ☐ Consider implementing a short, targeted leadership workshop on the benefits of diverse and flexible work practices, with some practical strategies to commence workplace cultural change.
- ☐ Actively promote the career development of women in partnership, managerial and senior positions.
- ☐ Consider adopting a target or a quota system for women in leadership positions. It is recommended that any target or quota system should also have a voluntary mentoring program to support the progression of women.
- ☐ Include key performance indicators aimed at promoting gender equality within the performance plans of senior leaders and managers within the organisations. This has the dual purpose of demonstrating the organisations commitment to the issue as well as holding key leaders in positions of influence accountable.

- ☐ Participate in a voluntary industry code. This may include that organisations publish Equal Opportunity Action Plans to Promote Gender Equality on the web, regarding compliance with the positive duty to eliminate discrimination, sexual harassment and victimisation.

Organisation wide – Promoting Gender Equality

- ☐ Ensure that the organisation has policies on equal opportunity, sexual harassment and the accommodation of parental and carer responsibilities.
- ☐ Conduct a review or audit of current workplace profiles to assess where there are gaps and opportunities for improvements in the organisation. The audit would include:
 - the number of women in leaderships positions across different divisions in the organisation
 - retention rates (including the number of years in the organisation)
 - promotion rates of women
 - number of people participating in flexible work practices
 - gender pay gap
 - attrition rates
 - review policies and grievance processes on equal opportunity, sexual harassment and the accommodation of parental and carer responsibilities
 - training attended by all staff on equal opportunity, sexual harassment and accommodating parental and carer responsibilities is reported and monitored
 - number of complaints of discrimination that are lodged with external agencies e.g. the Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission.
- ☐ Develop a Positive Duty Action Plan to Promote Gender Equality (this is recommended after a review is conducted to highlight current gaps and improvements). The Action plan aims to outline clear goals, objectives, outputs, activities, expected outcomes and accountabilities. The Action Plan should align issues of equal opportunity, flexible work practices and prevention of sexual harassment with the organisations existing values. It should also outline the organisations compliance with the positive duty to eliminate discrimination, sexual harassment and victimisation.
- ☐ Introduce an internal Diversity Working Group to monitor the progress of the Equal Opportunity Action Plan to Promote Gender Equality.
- ☐ Ensure that the organisation has clear, accessible complaint processes in place, and that these processes are adhered to when complaints are made.
- ☐ Organise for all staff, including managers and partners to participate in training on bullying, sexual harassment and anti-discrimination. Training is on an ongoing basis and serves as a refresher for all staff.
- ☐ Training for staff on sexual harassment also includes bystander education.
- ☐ Organise for all staff to participate in unconscious bias training.
- ☐ Develop a peer mentoring program or link in with existing mentoring programs. This may include leading law firms being involved in mentoring women lawyers from other firms that may not have the resourcing to conduct their own internal mentoring program.
- ☐ Consider how the organisation can share both good news and bad news stories at work conference and functions. This may include lunchtime seminars or a leadership series where experiences are shared.

Organisation-wide – Accommodating parental and carer responsibilities

- ☐ Ensure that the organisation has a clear policy on the accommodation of parental and carer responsibilities and flexible work practices.
- ☐ Provide career planning opportunities for employees who take time out or work part time.
- ☐ Encourage flexible work practices for both men and women, so that this becomes a normal way of working. These practices may include:
 - allow working from home by ensuring remote access to the office system
 - extra pay or time-in-lieu for hours worked outside agreed hours
 - opportunity for job sharing or part-time hours.
- ☐ Maintain contact with staff whilst on parental leave (with the employee's permission). This can assist them to retain files on their return, to stay connected with organisation and to maintain confidence levels.
- ☐ Consider the needs of staff returning to work after career breaks, including rebuilding their client base or reskilling. This may include developing continuing professional development (CPD) training for practitioners returning to work after parental leave and other absences or to invite staff on parental or other leave to attend CPD and other events.
- ☐ Provide the opportunity for women to participate in a mentoring program, and management opportunities to develop skills to apply for promotions.
- ☐ Consider emergency childcare arrangements. This may include the development of a childcare facility in an area with a high concentration of law firms (that a number of firms can access).
- ☐ Consider the option of team billing targets.
- ☐ Review the organisation on a regular basis to consider practical strategies to support flexible work practices.
- ☐ Educate staff members about the challenges of working flexible hours and develop strategies to build team support for this.

Chapter 7: Moving forward – recommended actions for stakeholders

The recommendations are aimed at industry regulators, membership based organisations and employers recognising that to achieve the cultural change desired there needs to be a coordinated, multi-faceted response to these issues.

The Commission recognises that industry bodies, such as the Law Institute of Victoria (LIV), are already actively involved in work on these issues, these recommendations build on that foundation.

With the assistance of relevant stakeholders, LIV will continue to provide both a leadership and coordination role to promoting gender equality. This will be achieved through:

1. Providing practice support to organisations in the form of information and resources

- a. Publishing guidance to support individual law firms to develop a business case for change. This includes producing tools to assist law firms to measure the cost of staff attrition.
- b. Developing an information exchange on best practice which could provide firms with an opportunity to share information, resources and to discuss challenges and successes.
- c. Developing and promoting education programs including:
 - i. 'Return to Work' planning – this may include education programs, workshops, seminars to assist employers and employees to manage prolonged absences from the workplace.
 - ii. Sexual harassment and discrimination awareness training - as part of the continuing professional development program.

- d. Developing a communications plan to promote issues of gender equality, flexible work practices and awareness of sexual harassment in the legal profession. This could include publishing articles in the Law Institute Journal, holding seminars, making media releases and using social media.

2. Providing support to individuals in the form of information and resources

- a. Developing and promoting education programs to individual practitioners including:
 - i. 'Return to Work' planning – this may include education programs, workshops, seminars to assist employers and employees to manage prolonged absences from the workplace.
 - ii. Sexual harassment and discrimination awareness training - as part of the continuing professional development program.
- b. Promoting available peer mentoring programs to increase participation rates. This includes the:
 - i. Law Institute of Victoria's Mentoring Program.
 - ii. Victorian Women's Lawyers Mentoring Program.

3. Collaborating with key stakeholders on advocacy and policy

- a. Progressing research on different business models of billing. Stimulate debate in the legal profession about appropriateness of the billable hours framework and the profession's culture of equating long hours with productivity and profitability.

- b. In consultation with law firms, considering the development of a voluntary code for the legal sector – this may include the profile of the firm, periodic reporting on percentage of women in partnership positions, number of employees working flexibly, number of complaints made based on gender, number of discrimination/ sexual harassment complaints lodged internally and externally, outcome of complaints. This could also include that firms opt in for complaints to be handled by a panel review that comprises external organisations.
- c. Collecting data and publishing an annual report card on the state of Victoria's legal sector in the *Law Institute Journal*. This is to include statistics on participation rates, attrition rates, leadership levels, gender pay gap. These reports could be supplemented by the diversity figures for individual practices, this would help to assist to identify problem areas and could also provide potential recruits and clients with access to diversity information.

This could later be enhanced by adding other diversity related factors such as age and ethnicity.
- d. Consider developing sector-wide targets or quotas for women in leadership positions. Stakeholders to explore Australian Stock Exchange model for voluntary/compulsory quotas of the percentage of women at partnership levels.

4. Recognising best practice

- a. Consider expanding the LIV Legal Awards to include a category for promoting diversity (in particular the promotion of gender equality). There is a possibility that the award could then be broken down into suburban, regional and large firms.

5. Additional recommendations

- a. That the Commission work with Diversity Council Australia (networking group for the legal profession) to consult on the development of a guideline aimed at promoting gender equality in the legal sector - the business case.
- b. That Legal Professional Learning Training providers consider the inclusion of modules on sexual harassment and discrimination as part of their curriculum to build sector capacity around these issues.

Appendix

Women in the Law project

Survey of women lawyers in Victoria

The Victorian Equal Opportunity and Human Rights Commission are researching the experiences of women lawyers. If you are a **female lawyer working in Victoria**, you may wish to complete this confidential survey below.

This survey will take around 20 minutes to complete.

This project is not a complaints process. Rather, the information gathered will inform the Commission's future work by identifying issues faced by women working in the law. Trends

identified in the survey will inform a report to be published on our website in 2012.

Before you begin the survey, please note that in submitting this survey you are providing your consent to participating in this research. You are providing your consent on the basis that the information collected will be kept confidential and that no person or employer will be identified in the report.

The Commission complies with Victorian privacy laws and the confidentiality provisions of the *Equal Opportunity Act 2010*. Our privacy policy is available at www.humanrightscommission.vic.gov.au/privacy

About you

1. How long have you been a lawyer or trainee lawyer?

- ☐ Less than one year
- ☐ 1-5 years
- ☐ 6-10 years
- ☐ 11-16 years
- ☐ 16-20 years
- ☐ More than 20 years

2. What best describes your current role?

- ☐ Trainee Lawyer
- ☐ Judge's Associate
- ☐ Associate / Solicitor / Lawyer
- ☐ Senior Associate / Senior Lawyer
- ☐ Special Counsel
- ☐ Partner
- ☐ Other (please specify)

.....

3. Do you currently work:

- ☐ Fulltime
- ☐ Part time
- ☐ Casual

4. What is the main area of law that you work in?

- ☐ Administrative / Government law
- ☐ Children's / Youth law
- ☐ Commercial / Corporate law
- ☐ Community law
- ☐ Criminal law
- ☐ Employment / workplace law
- ☐ Family law
- ☐ General practice
- ☐ Human rights law
- ☐ Intellectual property / IT law
- ☐ Insurance law
- ☐ Litigation
- ☐ Personal injury law
- ☐ Planning and Environment law
- ☐ Property law
- ☐ Wills and Estates
- ☐ Other (please specify)

.....

5. How long have you worked at your current workplace?

- ☐ Less than one year
- ☐ 1-5 years
- ☐ 6-10 years
- ☐ 11-15 years
- ☐ 16-20 years
- ☐ More than 20 years

About your workplace

6. What best describes your workplace?

- ☐ State government department [skip to question 8]
- ☐ Commonwealth government department (in Victoria) [skip to question 8]
- ☐ Local government [skip to question 8]
- ☐ Statutory authority [skip to question 8]
- ☐ Court or tribunal [skip to question 8]
- ☐ Private firm [proceed to question 7, ignore question 8]
- ☐ Corporation/company (e.g., position as in-house counsel) [skip to question 8]
- ☐ Community legal centre [skip to question 8]
- ☐ Other.

.....

7. What is the size of your firm in Victoria?

- ☐ Sole practitioner
- ☐ 2-10 lawyers
- ☐ 11-30 lawyers
- ☐ 31-50 lawyers
- ☐ 51-100 lawyers
- ☐ 101-200 lawyers
- ☐ 200+ lawyers

8. What is the size of your workplace?

- ☐ Not applicable – work in government department/statutory authority/local government, etc
- ☐ Less than 10 employees
- ☐ 11-50 employees
- ☐ 51-100 employees
- ☐ 101-500 employees
- ☐ 500+ employees

9. Where is your workplace located?

- ☐ Melbourne CBD
- ☐ Suburban
- ☐ Regional/rural

10. Employers have a duty to take positive action to eliminate discrimination, sexual harassment and victimisation in the workplace. What positive steps has your employer taken to promote gender equality in the workplace?

[Please tick all that apply]

- ☐ Has a workplace policy on discrimination, sexual harassment and victimisation
- ☐ Has a workplace policy on gender equality
- ☐ Has an effective complaint and grievance procedure
- ☐ Provides information about discrimination, sexual harassment and victimisation to new employees as part of the induction process
- ☐ Provides training for employees on equality, discrimination, sexual harassment and victimisation in the workplace
- ☐ Has a designated person or contact officer whom employees can speak to if they have any concerns regarding discrimination, sexual harassment and victimisation in the workplace
- ☐ Provides flexible working arrangements

What type of flexible working arrangements does your employer provide?

- ☐ flexible hours of work
- ☐ flexitime/TOIL
- ☐ job share
- ☐ work from home
- ☐ 48/52
- ☐ on-site child care
- ☐ other (please specify)

-
- ☐ Provides a mentoring program for female employees
 - ☐ Has established a "Women's Law Section" or equivalent within the workplace
 - ☐ Has senior leadership commitment to gender equity
 - ☐ Has other positive initiatives [please specify]
-

11. Do you have any suggestions for other ways in which your workplace could ensure that the workplace is free from discrimination, sexual harassment and victimisation?

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12. Is there anything else you would like to tell us about gender equity in your workplace?

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Discrimination at work

13. Have you ever experienced discrimination while working as a lawyer or legal trainee in Victoria?

- ☐ No [skip to question 23]
- ☐ Yes, at my former workplace
- ☐ Yes, at my current workplace [skip to question 15]
- ☐ Don't know [skip to question 15]

14. What best describes your former workplace?

- ☐ State government department
- ☐ Commonwealth government department (in Victoria)
- ☐ Local government
- ☐ Statutory authority
- ☐ Court or tribunal
- ☐ Private firm
- ☐ Corporation/company (eg, position as in-house counsel)
- ☐ Community legal centre
- ☐ Other

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15. Do you think you were discriminated against [Please tick all that apply]

- ☐ Because you were pregnant
- ☐ Because you were breastfeeding
- ☐ Due to your marital status
- ☐ Because you have children
- ☐ Because you are a carer
- ☐ Because of your physical features
- ☐ Because you are a woman
- ☐ Because you are gay/lesbian/bisexual
- ☐ Because you are transgender or intersex
- ☐ Other (please tick all that apply):
 - ☐ age
 - ☐ employment activity
 - ☐ disability
 - ☐ industrial activity
 - ☐ lawful sexual activity
 - ☐ political belief or activity
 - ☐ race
 - ☐ religious belief or activity
 - ☐ personal association with a person who is identified by reference to any of the above attributes

16. Was there more than one discriminator?

- ☐ Yes
- ☐ No

17. Was the discriminator/s [Please tick all that apply]

- ☐ Male
- ☐ Female

18. What was the discriminator's relationship to you? [you may tick more than one if there was more than one discriminator]

- ☐ Immediate supervisor/manager
- ☐ Employer/partner
- ☐ Co-worker
- ☐ Co-worker (more senior)
- ☐ Client
- ☐ Barrister
- ☐ Contractor
- ☐ Other (please specify)

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19. What was the nature of this discrimination? [Please tick all that apply]

- ☐ Asked discriminatory questions in a job interview and didn't get position
- ☐ Denied promotion
- ☐ Denied training or professional development opportunities
- ☐ Denied networking or other opportunities for advancement
- ☐ Hostile work environment
- ☐ Unreasonably refused flexible working arrangements
- ☐ Workplace bullying
- ☐ Unfair work allocation
- ☐ Demoted
- ☐ Transferred to another unit/section
- ☐ Lower pay than male equivalent
- ☐ Made redundant
- ☐ Dismissed
- ☐ Other (please specify)

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20. What impact did the discriminatory treatment have on you?

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21. Did you tell anyone or seek help from anyone about the discrimination? [Please tick all that apply]

- ☐ No
- ☐ Yes – my manager/supervisor
- ☐ Yes – a colleague
- ☐ Yes – my employer
- ☐ Yes – HR
- ☐ Yes – friends or family
- ☐ Yes - Equity Officer/ Sexual Harassment Contact Officer/ Harassment Contact Officer
- ☐ Yes - Co-worker
- ☐ Yes - A union or employee representative
- ☐ Yes - A lawyer or legal service
- ☐ Yes - Victorian Equal Opportunity and Human Rights Commission
- ☐ Yes - Australian Human Rights Commission
- ☐ Yes - Other (please specify)
-

22. Did you make a complaint to any of the following? [Please tick all that apply]

- ☐ Did not make a complaint [skip to question 25]
- ☐ Manager/supervisor at work
- ☐ Employer/partner
- ☐ Human Resources manager or equivalent at work
- ☐ Equity Officer/Sexual Harassment Contact Officer/ Harassment Contact Officer
- ☐ A union or employee representative
- ☐ A lawyer or legal service
- ☐ Victorian Equal Opportunity and Human Rights Commission
- ☐ Victorian Civil and Administrative Tribunal
- ☐ Australian Human Rights Commission
- ☐ Fair Work Australia
- ☐ Other [please specify]
-

23. What was the outcome of the complaint? [Please tick all that apply]

- ☐ Complaint has not yet been finalised
- ☐ Complaint was not accepted

Why was the complaint not accepted?

- ☐ I was not believed
- ☐ complaint was not progressed by receiving body
- ☐ complaint was refused by receiving body
- ☐ other (please specify)
-

☐ I withdrew my complaint

Why did you withdraw the complaint?

-
- ☐ I received an apology
- ☐ I received compensation
- ☐ My employer made changes to the workplace to prevent discrimination occurring in the future
- ☐ Discrimination stopped
- ☐ Discrimination continued
- ☐ I left my job
- ☐ I was victimised for making a complaint
- ☐ I suffered other consequences e.g. demoted [please specify]
-

24. What happened to the discriminator/s? [Please tick all that apply]

- ☐ Nothing
- ☐ He/she was spoken to by my employer
- ☐ He/she was formally warned by my employer
- ☐ He/she was made to apologise
- ☐ He/she was compelled to go to training
- ☐ He/she was subject to disciplinary action
- ☐ He/she was transferred to another unit/section
- ☐ He/she was demoted
- ☐ He/she was dismissed
- ☐ He/she resigned
- ☐ Other (please specify)
-

25. If you did not complain, why not?

[Please tick all that apply]

- ☐ Did not think the matter was serious enough to warrant a complaint
- ☐ Did not know how or where to make complaint
- ☐ Did not think I would be believed
- ☐ I was too scared/frightened
- ☐ I was told that if I complained I would lose my job or suffer other negative consequences
- ☐ Complaint process too daunting
- ☐ Didn't think anything would happen/no point
- ☐ Concerned there would be negative repercussions for my career

What repercussions were you fearful of?

- ☐ I would be demoted
- ☐ I would be transferred
- ☐ I would be ostracised in the workplace
- ☐ I would lose career opportunities
- ☐ I was concerned my reputation in the profession would be jeopardised
- ☐ Other (please specify)

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26. Are you aware of any instances of discrimination based on pregnancy, breastfeeding, marital status, parental status, sex, sexual orientation or gender identity that have happened to other female lawyers in your workplace in the last 12 months?

- ☐ Yes

Please provide details

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- ☐ No [skip to question 27]

27. Sometimes it can be difficult to link discrimination to a specific incident, because the discrimination is part of a broader pattern of behaviour (for example, through workplace culture). Do you think this is a problem at your firm?

- ☐ Yes, at my current workplace
- ☐ Yes, at my former workplace

What best describes your former workplace?

- ☐ State government department
- ☐ Commonwealth government department (in Victoria)
- ☐ Local government
- ☐ Statutory authority
- ☐ Court or tribunal
- ☐ Private firm
- ☐ Corporation/company (e.g., position as in-house counsel)
- ☐ Community legal centre
- ☐ Other.

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- ☐ No
- ☐ Unsure

If you ticked yes, no, or unsure, please describe the pattern, culture or experiences you have noticed

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Accommodating parental or carer responsibilities

28. Have you ever made a request for your employer to accommodate your responsibilities as a parent or carer (for example, by requesting flexible working arrangements?)

- ☐ Yes
- ☐ No [skip to question 35]
- ☐ Not applicable [skip to question 36]

29. What type of responsibility do you have?

- ☐ Parental
- ☐ Carer
- ☐ Both

30. What type of accommodation did you request? [Please tick all that apply]

- ☐ flexible hours of work
- ☐ flexitime/TOIL
- ☐ job share
- ☐ work from home
- ☐ 48/52
- ☐ on-site child care
- ☐ Other

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31. What was the outcome of your request?

- ☐ My request was approved [skip to question 30]
- ☐ My request was partially approved
- ☐ My request was considered but not approved
- ☐ My request was immediately refused

32. Please provide details

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33. If your request was approved, how have the new working arrangements worked for you in reality?

- ☐ The arrangements have worked well for me
- ☐ The arrangements have mostly worked well for me
- ☐ I find that the quality of work I am given has declined
- ☐ The arrangements started out well but were not sustainable
- ☐ The arrangements have had a negative impact on my chances of promotion and other career opportunities
- ☐ Although management was supportive, I feel my colleagues are not
- ☐ Other [please specify]

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34. What could your workplace do to make the arrangements work better for you?

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35. If you ticked 'no', why not?

- ☐ I have not needed to
- ☐ I thought the request would be refused
- ☐ I felt that making a request would negatively impact on my future career opportunities and/or chances for promotion
- ☐ I felt that making a request would negatively affect my reputation within the workplace and/or the legal profession
- ☐ Other [please specify]

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36. Are you aware of any instances in your workplace where another female lawyer has made a request to accommodate parental or carer responsibilities, and this has been refused?

- ☐ Yes
- ☐ No [skip to question 38]

37. Please provide details

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Sexual harassment

38. Have you ever experienced sexual harassment while working as a lawyer or legal trainee in Victoria?

- ☐ Yes
- ☐ No [skip to question 54]
- ☐ Don't know

39. Which of the following behaviours have you experienced? [Please tick all that apply]

- ☐ Unwelcome or inappropriate physical contact
- ☐ Unwelcome staring or leering that made you feel intimidated
- ☐ Sexually suggestive comments or jokes (in person or via email, SMS or other social media) that made you feel offended
- ☐ Sexually explicit pictures, posters or gifts that made you feel offended
- ☐ Repeated or inappropriate advances or invitations to go out on dates
- ☐ Intrusive questions about your private life or physical appearance that made you feel offended
- ☐ Requests or pressure for sex or other sexual acts
- ☐ Actual or attempted rape or assault
- ☐ Any other unwelcome conduct of a sexual nature (please provide details

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40. Did this harassment occur in your

- ☐ current workplace [skip to question 39]
- ☐ former workplace

41. What best describes your former workplace?

- ☐ State government department
Commonwealth government department (in Victoria)
- ☐ Local government
- ☐ Statutory authority
- ☐ Court or tribunal
- ☐ Private firm
- ☐ Corporation/company (eg, position as in-house counsel)
- ☐ Community legal centre
- ☐ Other

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42. When did this happen?

- ☐ Less than 1 year ago
- ☐ Between 1 to 5 years ago
- ☐ More than 5 years ago

43. How long had you been working at the workplace when the harassment started?

- ☐ Less than 3 months
- ☐ More than three months but less than 12 months
- ☐ More than 12 months but less than 5 years
- ☐ 5 or more years

44. Was there more than one harasser?

- ☐ Yes
- ☐ No

45. Was/were the harasser/s:

- ☐ Male
- ☐ Female

46. What was the harasser's relationship to you?
[only tick more than one if there was more than one harasser]

- ☐ Immediate supervisor/manager
- ☐ Employer/partner
- ☐ Co-worker
- ☐ Co-worker (more senior)
- ☐ Client
- ☐ Barrister
- ☐ Contractor
- ☐ Other (please specify)

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47. Was the behaviour:

- ☐ One off
- ☐ Sporadic (comes and goes)
- ☐ Ongoing (continuous)

48. What impact did sexual harassment have on you?

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49. Did you tell anyone or seek help from anyone about the sexual harassment?

- ☐ No
- ☐ Yes –my manager/supervisor
- ☐ Yes –a colleague
- ☐ Yes –my employer
- ☐ Yes –HR
- ☐ Yes –friends or family
- ☐ Yes - Equity Officer/ Sexual Harassment Contact Officer/ Harassment Contact Officer
- ☐ Yes - Co-worker
- ☐ Yes - A union or employee representative
- ☐ Yes - A lawyer or legal service
- ☐ Yes - Victorian Equal Opportunity and Human Rights Commission
- ☐ Yes - Australian Human Rights Commission
- ☐ Yes - Other (please specify)

.....

50. Did you make a complaint to any of the following? [Please tick all that apply]

- ☐ Did not make complaint [skip to question 53]
- ☐ Manager/supervisor at work
- ☐ Employer/partner
- ☐ Human Resources manager or equivalent at work
- ☐ Equity Officer/Sexual Harassment Contact Officer/ Harassment Contact Officer
- ☐ A union or employee representative
- ☐ A lawyer or legal service
- ☐ Victorian Equal Opportunity and Human Rights Commission
- ☐ Australian Human Rights Commission
- ☐ Police
- ☐ Other (please specify)

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51. What was the outcome of the complaint?
[Please tick all that apply]

- ☐ Complaint has not yet been finalised
- ☐ Complaint was not accepted
- ☐ Why was the complaint not accepted?
- ☐ I was not believed
- ☐ complaint was not progressed by receiving body
- ☐ complaint was refused by receiving body
- ☐ other (please specify)

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☐ I withdrew my complaint

Why did you withdraw the complaint?

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- ☐ I received an apology
- ☐ I received compensation
- ☐ My employer made changes to the workplace to prevent sexual harassment in the future
- ☐ Harassment stopped
- ☐ Harassment continued
- ☐ I was victimised for making a complaint
- ☐ I left my job
- ☐ I suffered other detriment e.g. demoted (please specify)

.....

52. What happened to the harasser/s?
[Please tick all that apply]

- ☐ Nothing
- ☐ He/she was spoken to by my employer
- ☐ He/she was formally warned by my employer
- ☐ He/she was made to apologise
- ☐ He/she was compelled to go to training
- ☐ He/she was subject to disciplinary action
- ☐ He/she was transferred to another unit/section
- ☐ He/she was demoted
- ☐ He/she was dismissed
- ☐ He/she resigned
- ☐ Other

.....

53. If you did not complain, why not?
[Please tick all that apply]

- ☐ Did not think the matter was serious enough to warrant a complaint
- ☐ Did not know how or where to make complaint
- ☐ Did not think I would be believed
- ☐ I was too scared/frightened
- ☐ I was told that if I complained I would lose my job or suffer other negative consequences
- ☐ Complaint process too daunting
- ☐ Didn't think anything would happen/no point
- ☐ Concerned there would be negative repercussions for my career

What repercussions were you fearful of?

- ☐ I would be demoted
- ☐ I would be transferred
- ☐ I would be ostracised in the workplace
- ☐ I would lose career opportunities
- ☐ I was concerned my reputation in the profession would be jeopardised]
- ☐ Other

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54. Are you aware of any instances of sexual harassment that have happened to other female lawyers in your workplace in the last 12 months?

- ☐ Yes
- ☐ Please provide details

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- ☐ No [skip to question 53]

55. Thinking about your workplace at that time of the sexual harassment, would you say that this type of behaviour was:

- ☐ Very rare
- ☐ Rare
- ☐ Occurred sometimes
- ☐ Common
- ☐ Don't Know

56. Sometimes it can be difficult to link sexual harassment to a specific incident, because it is part of a broader pattern of behaviour (for example, through workplace culture). Do you think this is a problem at your workplace?

- ☐ Yes, at my current workplace
- ☐ Yes, at my former workplace

What best describes your former workplace?

- ☐ State government department
- ☐ Commonwealth government department (in Victoria)
- ☐ Local government
- ☐ Statutory authority
- ☐ Court or tribunal
- ☐ Private firm
- ☐ Corporation/company (e.g., position as in-house counsel)
- ☐ Community legal centre
- ☐ Other

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- ☐ No
- ☐ Unsure

If you ticked yes, nor unsure, please describe the pattern, culture or experiences you have noticed

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Thank you for participating in our survey. Your response is very important to us. Before finishing, please note that in submitting this survey you are providing your consent to participate in this research on the basis that your personal information will be kept private and the published report does not contain any identifying information about you or your employer.

SUBMIT

Endnotes

Endnotes

- 1 Alexander Ward, 'Presidents Column: Why we must retain female lawyers' (July 2011) *Australian Law Management Journal*.
- 2 K Lee Adams, 'Dorothy goes to law school: Stories of Institutional Inertia and Response in the American Legal Academy' (2001) 1 (2) *Queensland University of Technology Law and Justice Journal* 189, 190.
- 3 Alex Boxsell, 'Moves to boost women', *Australian Financial Review* (Sydney), 9 December 2011, 44.
- 4 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.
- 5 Terry Hutchinson and Heather Skousgaard, 'Women in the Queensland Legal Workplace: A Snapshot' (2008) 13 (1) *Deakin Law Review* 37, 40.
- 6 Australian Government, Equal Opportunity for Women in the Workplace Agency, *Gender Balanced Leadership in Law: Data Comparison* (2012) <<http://www.eowa.vic.gov.au>> at May 2012.
- 7 Australian Government, Equal Opportunity for Women in the Workplace Agency, *Behind the gender pay gap* (2012). <<http://www.eowa.gov.au>> at August 2012.
- 8 Kate Eastman, 'Sex discrimination in the legal profession' (2004) 27(3) *University of New South Wales Law Journal* 866, 875.
- 9 *Equal Opportunity Act 2010* (Vic) s 15.
- 10 *Hickie v Hunt and Hunt* (1998) HREOCA 8.
- 11 *Hickie v Hunt and Hunt* (1998) HREOCA 8.
- 12 *Hickie v Hunt and Hunt* (1998) HREOCA 8.
- 13 *Hickie v Hunt and Hunt* (1998) HREOCA 8.
- 14 Law Council of Australia, *Submission of the Law Council of Australia to the House of Representatives Standing Committee on Employment and Workplace Relations- Inquiry into pay equity and associated issues related to increasing female participation in the workforce* (April 2009) 7.
- 15 The project will also complement work being undertaken by the Victorian Women Lawyers (VWL) that is examining gender-based attrition in the legal profession.
- 16 *Hickie v Hunt and Hunt* (1998) HREOCA 8.
- 17 74 out of 416 responses: 20.2 per cent (84) responded that this was a problem in their current workplace, while 21 per cent (90) believed this was the case in their former workplace.
- 18 *Equal Opportunity Act 2010* (Vic) s 6.
- 19 *Equal Opportunity Act 2010* (Vic) s 8(1).
- 20 *Equal Opportunity Act 2010* (Vic) s 8(2)(a).
- 21 *Equal Opportunity Act 2010* (Vic) s 8(2)(b).
- 22 *Equal Opportunity Act 2010* (Vic) s 17, 19.
- 23 *Equal Opportunity Act 2010* (Vic) s 9(1).
- 24 *Equal Opportunity Act 2010* (Vic) s 9(2). Section 9(3) provides a non-exhaustive list of circumstances to be considered when determining whether a requirement, condition or practice is reasonable, including the nature and extent of the disadvantage resulting from the imposition of the requirement, condition or practice and the financial circumstances of the person imposing the requirement, condition or practice.
- 25 *Equal Opportunity Act 2010* (Vic) s 10.
- 26 *Equal Opportunity Act 2010* (Vic) s 11.
- 27 *Sex Discrimination Act 1984* (Cth) s 3.
- 28 *Fair Work Act 2009* (Cth) s 351.
- 29 *Fair Work Act 2009* (Cth) s 342.

- 30 59 out of 168 responded that they had experienced discrimination in a former or current workplace.
- 31 26 per cent who had experienced discrimination worked in a firm with more than 200 lawyers, compared to the sample size for the whole survey which was 38.4 per cent for this group. Nineteen per cent who had experienced discrimination were from firms with between 101- 200 lawyers, the sample size of those working in this sized firm was 18.1 per cent. Twenty two per cent who had experienced discrimination were from small firms of two to 10 lawyers, the sample size of those working in this sized firm was 18.6 per cent.
- 32 120 out of 171 responses.
- 33 Respondents were able to select both female and male if there was more than one discriminator.
- 34 The issue of employers accommodating lawyers' parental and carer responsibilities is discussed in greater detail in Chapter 3.
- 35 *Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature on 18 December 1979, 1249 UNTS, 13 (entered into force 3 September 1981).
- 36 121 out of 199 respondents.
- 37 52 out of 199 respondents.
- 38 *Equal Opportunity Act 2010* (Vic) ss103-104.
- 39 43 out of 78 respondents (55.1 per cent).
- 40 174 out of 416 responses: 20.2 per cent (84) responded that this was a problem in their current workplace, while 21.6 per cent (90) believed this was the case in their former workplace.
- 41 Nadine Levy, 'Issues facing young women lawyers' (Nov 2011) 33 (10) *Bulletin (Law Society of South Australia)* 28.
- 42 Ibid.
- 43 Ibid.
- 44 Eastman, above n 8, 866.
- 45 Ibid 873.
- 46 'Unconscious bias may be defined as attitudinal biases about gender, age, race, etc, that we are unaware we have and are unaware we act upon. Inequities in the workplace develop because people behave differently towards different types of other people': quoted in Workplace Info *Women in professional firms: unconscious bias— busting myths and stereotypes* (2011) <<http://www.workplaceinfo.com.au/human-resources-management/eo/women-in-professional-firms-unconscious-bias-busting-myths-and-stereotypes>> at 7 February 2011.
- 47 On 1 October 2012, Freehills merged with Herbert Smith to create the new international law firm Herbert Smith Freehills.
- 48 Nicola Berkovic, 'Asian shift broadens diversity focus in new global law firms,' *The Australian* (Sydney), 6 July 2012.
- 49 Key informant interview, Kate Jenkins, Herbert Smith Freehills, 13 June 2012.
- 50 Key informant interview, Kate Jenkins, Herbert Smith Freehills, 13 June 2012.
- 51 Key informant interview, Kate Jenkins, Herbert Smith Freehills, 13 June 2012.
- 52 Key informant interview, Kate Jenkins, Herbert Smith Freehills, 13 June 2012.
- 53 Key informant interview, Kate Jenkins, Herbert Smith Freehills, 13 June 2012.
- 54 Rachel Nickless and Narelle Hooper, 'Pregnant pause for thought' *Australian Financial Review* (Sydney), 19 July 2012, 3.
- 55 Forty-six per cent of Australian lawyers are women. See Siobhan E Austen & Elissa R Birch, *Family responsibilities and women's working lives* (2000) Women's Economic Policy Analysis Unit, Curtin University of Technology, 2.
The Australian Bureau of Statistics reported that women's participation in the work force in August 2011 was 59 per cent, and remained relatively unaffected by age from 20- 54 years. This figure of 59 per cent is almost double that of the workforce participation rate of women in August 1961, which was 34 per cent. Australian Government, Australian Bureau of Statistics (24 May 2012) *Fifty Years of Labour Force: Now and Then Australian Labour Market Statistics* < <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/1301.0Main+Features452012> > at 24 May 2012.
- 56 Ward, above n 1.
- 57 Diversity Council Australia, 'Paid parental leave and flexible working paying dividends for employers' (2012). <<http://www.dca.org.au/News/Media-Releases/Paid-parental-leave-and-flexible-working-paying-dividends-for-employers>> at 19 June 2012.
- 58 Ibid.
- 59 Ibid.
- 60 Victorian Equal Opportunity and Human Rights Commission, *Pregnancy and work – Time to deliver, Retail Managers Toolkit Business Case for Good Management of Pregnancy and Work* (2010) 6.
- 61 One respondent did not provide details of their status as a parent and/or carer.

- 62 32.4 per cent (24) of those whose requests were approved worked in a law firm with 200 + lawyers, compared to the sample size of 38.4 per cent (91), 22.9 per cent (17) who reported that their request was approved worked in a law firm with 101-200 lawyers compared to the survey sample size of 18.1 per cent (43).
- 63 The Law Society of New South Wales, *Thought Leadership 2011 Advancement of women in the profession – report and recommendation* (2011) 16, 19.
- 64 Ibid.
- 65 In NSW women practising as solicitors has grown by 452 per cent since 1988, while the number of men practising has risen by 64 per cent, yet women still represent only about 23 per cent of principals in law firms with more than 20 partners. Catherine Fox, 'Motherhood still a big issue on career path' *Australian Financial Review*, (Sydney), 18 July 2012, 3.
- 66 Helen Conway, Director of the Equal Opportunity for Women in the Workplace Agency as cited in Alex Boxsell, 'Adroit advocate for women in the law', *Australian Financial Review*, (Sydney), 4 May 2012, 43
- 67 The research 'involved...highly interactive 'think tanks' with 57 experts from a range of... organisations'. Diversity Council of Australia, *Get Flexible or get real: It's time to make flexible working a legitimate career choice* (2012) < <http://www.dca.org.au/News/News/Get-flexible-or-get-real%3A-It%E2%80%99s-time-to-make-flexible-working-a-legitimate-career-choice/245> > at 19 March 2012.
- 68 Ibid.
- 69 Helen Conway in Michaela Whitbourn, Narelle Hooper and David Ramli, 'Oprah philosophy v weighing choices' *Australian Financial Review*, (Sydney), 4 July 2012, 3.
- 70 The Law Society of New South Wales, *Advancement of women in the profession*, above n 63, 24.
- 71 Ibid 25.
- 72 Key informant interview, Sally Macindoe, Norton Rose, 6 September 2012.
- 73 Key informant interview, Sally Macindoe, Norton Rose, 6 September 2012.
- 74 Victorian Equal Opportunity and Human Rights Commission *Right Smart Employers- Sexual Harassment* (2011) <<http://www.humanrightscommission.vic.gov.au>> at 22 November 2012.
- 75 *Equal Opportunity Act 2010* (Vic) s15.
- 76 100 out of 419 responses.
- 77 Respondents could select more than one answer.
- 78 Australian Human Rights Commission, *Working without fear: Results of the sexual harassment national telephone survey* (2012) 4.
- 79 Australian Human Rights Commission, *Encourage, support, act! Bystander approaches to sexual harassment in the workplace* (2012) 16.
- 80 32.6 per cent (17) women who reported sexual harassment worked in a law firm with 200 + lawyers, compared to the survey sample size of 38.4 per cent (91). 11.5 per cent (6) who reported sexual harassment worked in a law firm with 101-200 lawyers compared to the survey sample size of 18.1 per cent (43). 11.5 per cent (6) who reported sexual harassment worked in a law firm with 50-100 lawyers, compared to the sample size of 6.3 (15) per cent. 9.6 per cent (5) who reported sexual harassment worked in a law firm with 30-50 lawyers, compared to the sample size of 4.6 per cent. 15.3 per cent (8) who reported sexual harassment worked in a law firm with 11-30 lawyers compared to the sample size of 10.5 per cent (25).
- 81 Of the 103 that answered this question 22.3 per cent (23) stated less than 3 months; approximately 40.8 per cent (42) stated more than three months but less than 12 months.
- 82 102 people answered this question.
- 83 This survey reviewed the workplace sexual harassment complaints lodged with all the state and territory Commissions as well as the Australian Human Rights Commission from 1 July 2009 to 31 December 2009. Sara Charlesworth, Paula McDonald, Anthea Worley, Tina Graham and Alissa Lykhina, *Formal complaints of workplace sexual harassment lodged with Australian Human Rights and Equal Opportunity Commissions 1 July 2009-31 December 2009* (2012) Centre for Work and Life, University of South Australia, 8.
- 84 Australian Human Rights Commission, *Working without fear*, above n 78, 4.
- 85 Respondents were able to select more than one option.
- 86 Respondents were able to select more than one option.
- 87 Seventy-three per cent compared to 65 per cent. See Charlesworth, McDonald, Worley, Graham and Lykhina, above n 83,10.
- 88 *Fraser-Kirk v David Jones Limited* (2010) FCA 1060.

- 89 Paul Bibby, 'Landmark sexual harassment case spurs others to come forward', *The Age* (Melbourne), 8 March 2011.
- 90 Ibid.
- 91 Eastman, above n 8, 870.
- 92 Arguably, the culture of a workplace informs people's perception of what constitutes sexual harassment. This is likely to contribute to under-reporting. Among the general population there may also be a lack of knowledge about what constitutes the legal definition of sexual harassment. For example, almost 18 per cent of respondents in the Australian Human Rights Commission research who had indicated that they had not been sexually harassed based on the legal definition, then went on to report experiencing behaviours that are likely to constitute unlawful sexual harassment). Australian Human Rights Commission, *Working without fear*, above n 78, 4.
- 93 Respondents were able to select more than one option.
- 94 Australian Human Rights Commission, Encourage, support, act! above n 79, 12.
- 95 See eg. Charlesworth, McDonald, Worley, Graham and Lykhina, above n 83,
20. In this study 81 per cent of female complainants reported experiencing individual offence/distress, 73.5 per cent reported that there was an impact on their health and wellbeing, while 27.3 per cent reported financial hardship.
- 96 Australian Human Rights Commission, Encourage, support, act! above n 79, 1.
- 97 *Declaration on the Elimination of Violence against Women*, GA Res 48/104, UN GAOR, 48th sess, 85th plen mtg, UN Doc A/48/49, art 1 (20 December 1993).
- 98 Victorian Government, *Victoria's Action Plan to Address Violence against Women and Children- Everyone has a responsibility to act 2012-2015* (2012). See also Victorian Health Promotion Foundation, *Preventing violence before it occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria* (2007)13.
- 99 Based on a model proposed by the World Health Organisation in its *World Report on Violence and Health* (WHO 2002), see Victorian Health Promotion Foundation, Ibid 13.
- 100 Australian Human Rights Commission, Encourage, support, act! above n 79, 12.
- 101 Ibid 12.
- 102 Research indicates that the presence of violence supportive norms, as well as the absence of strong sanctions against violence, are key determinants to this violence occurring. See Victorian Health Promotion Foundation, above n 98, 36-37.
- 103 Sara Charlesworth & Paula McDonald, 'Sexual Harassment in Australia: Organisational prevention and responses' (Speech delivered at the Anti-Discrimination Seminar Series, Victoria Legal Aid and Victorian Equal Opportunity and Human Rights Commission, Melbourne, February 2011).
- 104 Ibid.
- 105 Australian Human Rights Commission, (2012), Encourage, support, act, above n 79, 35.
- 106 Ibid 35.
- 107 Victorian Health Promotion Foundation, above n 98.
- 108 Equal Opportunity for Women in the Workplace Agency, Gender Balanced Leadership in law: Data comparison, above n 6.
- 109 Equal Opportunity for Women in the Workplace Agency, Behind the gender pay gap, above n 7.
- 110 See also Eastman, above n 8, 875.
- 111 Jillian Cavanagh & Ron Fisher, 'Discrimination in legal practice: An examination of policies impacting on educational opportunities for women' (2008) 2 (4) *Multicultural Education and Technology Journal* 200, 202.
- 112 Research by the Centre for Legal Education found that the five most important factors to explain career choice included 'intrinsic interest in the job, quality of training, suits talents, opportunity to use legal knowledge and security of employment'. The Law Society of New South Wales, *After Ada: a new precedent for women in law* (2002) 15.
- 113 Ibid 15.
- 114 Focus group, 23 April 2012.
- 115 Focus group, 23 April 2012.
- 116 Focus group, 23 April 2012.
- 117 The average weekly ordinary-time earnings of females working full-time were \$1,193.50 per week, while men earned an average weekly wage of \$1,446.30. Cited in Australian Government, Equal Opportunity for Women in the Workplace Agency (2012) Gender Pay Gap Statistics: *ABS Average weekly earnings (Cat No 6302.0)* <http://www.eowa.gov.au/Developing_A_Workplace_Program.asp>, at 16 August 2012.
- 118 Ibid.
- 119 Ibid 2.

- 120 Note: According to the Australian Bureau of Statistics, Legal and Accounting Services fall under the 'Professional, Scientific and Technical Services' industry. Ibid 3.
- 121 Equal Opportunity for Women in the Workplace Agency, Gender Balanced Leadership in law: Data comparison, above n 6.
- 122 Graduate Careers Australia *Gradstats – Employment and salary outcomes of recent higher education graduates* (2012) <<http://www.graduatecareers.com.au/research/researchreports/gradstats>> at June 2012.
- 123 Equal Opportunity for Women in the Workplace Agency, Behind the gender pay gap, above n 7.
- 124 Ibid.
- 125 Equal Opportunity for Women in the Workplace Agency, *Gender pay gap: The facts, why it is important and what actions can be taken* (2012) <<http://www.eowa.gov.au/>> at 22 November 2012.
- 126 Diversity Council Australia, above n 57.
- 127 Margaret Thornton & Joanne Bagust 'The Gender Trap: Flexible Work in Corporate Legal Practice', (2007) 45(4) *Osgoode Hall Law Journal* 773, 778.
- 128 Ibid 785.
- 129 While 24 per cent of all women will remain childless, the figure for professional women is closer to 50 per cent. Australian Bureau of Statistics, *Australian Social Trends Family formation trends in childlessness*, (2002) Cat.4102.0.
- 130 The Law Society of New South Wales, After Ada, above n 112, 9.
- 131 Triulzi *Family Responsibilities Study 1998*, cited in Ibid 24.
- 132 Thornton & Bagust, above n 127, 801.
- 133 Eastman, above n 8.
- 134 Ibid 875.
- 135 Thornton & Bagust, above n 127, 801.
- 136 Eastman, above n 8. 873.
- 137 Ibid 873.
- 138 Berkovic, above n 48.
- 139 Alex Boxsell, 'Moves to boost women', *Australian Financial Review* (Sydney), 9 December 2011, 44. These findings were consistent with a NSW study, which revealed that in 2010, while 46 per cent of lawyers in NSW were women only 20 per cent of women lawyers were partners. See Law Society of New South Wales, Advancement of women in the profession, above n 63.
- 140 Ibid.
- 141 Alex Boxsell, 'Female and seeking a place at the top? Think smaller'. *Australian Financial Review* (Sydney), 29 June 2012, 45.
- 142 Ibid 45.
- 143 Ibid.
- 144 Ibid.
- 145 Ibid.
- 146 Charlesworth & Campbell, above n 4.
- 147 Ibid 1.
- 148 De-identified data included both annual numbers and types of practising certificates that were held by male and female lawyers from 1998 to 2007/08 in the categories of employee, corporate and principal. Note the discussion on attrition rates does not take into account the number of people who went to the bar, where a practising certificate is not needed.
- 149 Charlesworth & Campbell, above n 4, 9.
- 150 Ibid.
- 151 Ibid.
- 152 Ibid 2.
- 153 Ibid.
- 154 Prof. Hilary Sommerlad, Dr Lisa Webley, Liz Duff, Dr Daniel Muzio, Dr Jennifer Tomlinson, *Diversity in the legal profession in England and Wales: A qualitative study of barriers and individual choices* (2010) 2.
- 155 Ibid.
- 156 Ibid.
- 157 Dr Jennifer Tomlinson and Dr Daniel Muzio *Structure, agency, gender and ethnicity in the legal profession in England and Wales* (2012) Centre for Employment Relations Innovation and Change, University of Leeds.
- 158 Ibid 11.
- 159 Ibid 8.
- 160 Ibid 22.
- 161 Key informant interview, Fiona McLeay, Public Interest Law Clearing House, 11 July 2012.



**Victorian Equal Opportunity
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