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Are we there yet? Best practices for diversity and inclusion in Australia

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ABSTRACT

This article reports on the findings of a pilot research project investigating current best practices, operating within national law firms in Australia, that support women lawyers in their advancement to partnership and other leadership positions. Academic research and professional body reports suggest that current diversity and inclusion (D&I) initiatives across the private sector are not resulting in significant change to advancement, retention and attrition of women in the legal profession. However, work done by the Women Lawyers' Association of New South Wales in Australia, through the Data Comparison Project (DCP), indicates that some firms have made better progress than others. Building on the DCP, this article presents the findings of a pilot project involving in-depth interviews with four of the top-achieving national law firms in Australia on gender equity criteria. It finds that these firms are collectively engaging with many of the best practice initiatives for D&I recommended by the current national and international research and scholarship, and in some instances go beyond international best practice. What is apparent, however, is that the current best practices have yet to achieve significant advancement of women, or to break through the glass ceilings that continue to operate for women in large Australian law firms.

Introduction

Women have been graduating from law schools for over a hundred years, in recent decades in Australia in numbers equal to, and now well surpassing, that of men. In the last five years they are also entering the legal profession at a much higher rate than men. However, it is well-documented in Australia and internationally that women are still grossly underrepresented at the top levels of the profession (Women Lawyers Association of New South Wales, 2014; Rikleen, 2015; American Bar Association, 2016). These problems are perhaps most acute in large national law firms. A number of explanations for this phenomenon have been identified, including: firm culture; the social reproduction of gendered power differentials; gender discrimination; and organisational structure (see Seuffert *et al.*, 2018, pp. 40–43). Further, in response, a range of “diversity initiatives” have been developed and implemented at many firms, including “unconscious bias” training, flexible work policies, mentoring

and affinity groups, monitoring of gender pay and bonus gaps, self-assessment, leadership training and even voice coaching. A range of studies canvass these initiatives, sometimes analyse their success, and make recommendations for “best practices” (see Rhode and Ricca, 2015; Jaffe *et al.*, 2016; Bouchard and Quansah, 2014). However, there is a dearth of qualitative research investigating these best practices, and in particular talking to the women in firms where the practices have been implemented.

The Women’s Lawyers Association of New South Wales (WLANSW), in Australia, has been ranking large Sydney-based national law firms on gender diversity criteria since 2012, providing a unique and valuable dataset for women choosing between large firms. This dataset also provided the foundation for a partnership between the WLANSW and the authors of this article, the Director and a member of the Legal Intersections Research Centre at the University of Wollongong in NSW. The partnership engaged in a pilot research project investigating the implementation of “best practice” diversity initiatives at four law firms that are highly ranked by the WLANSW dataset. This pilot research project is unusual in that it adopted a best practice analytical frame, focusing not on researching the *problem* of underrepresentation of women in seniority, which has been extensively canvassed in international research, but rather on the *best practices*, and in particular the implementation of best practices, and women’s experiences of those practices. Methodologically, this approach called for an examination of the top performing Australian law firms to identify diversity initiatives. It also called for qualitative research speaking directly with managing partners, and women lawyers at a variety of levels of seniority, practising within these firms about their awareness and experience of these best practices.

This article reports on the results of this pilot research project. All four firms that participated engage in a range of diversity initiatives identified in the research as “best practice”, and the firms had all achieved a range of diversity awards. We also identified some examples of best practices that exceed those identified internationally. However, women’s experiences of the diversity initiatives, and of the firms’ culture more generally, varied, within the same firm, as well as across firms. Some women reported a disjuncture between the public face of the firms in relation to diversity, as evidenced in their policies and awards, and their experiences of working at the firm.

Background

Women are entering law school and the profession in greater numbers than ever before in Australia, but the well documented problem of representation falling off at the senior levels of the private profession continues. Despite the fact that women are the majority of law graduates and new entrants into the profession, men still dominate in the positions of power above senior associate in

large law firms. Recent figures suggest that just 24% of partners in Australia's major firms, and just 3.4% of all managing partners, are women (Papadakis and Tadros, 2016, p. 8; Mezrani, 2014).

We have argued that the research and analysis on the problems of attraction, retention, re-engagement after parental leave and advancement of women in law firms, point to a number of interlocking explanations (Seuffert *et al.*, 2018, pp. 39–45). First, processes of social reproduction of gendered power differentials, sometimes reflected in entrenched gender stereotypes, and including hierarchical segmentation of workforces and tasks, rewards and career expectations reproduce traditional gender hierarchies with men in positions of power. Second, the structure of firms and the profession, and recent restructurings, such as the creation of tiers of partnership, as well as increased upward pressure on billable hours, operate to favour men and male-identified traits, and to hinder the advancement of women. Third, gender discrimination and exclusionary practices in both workplaces and in society contribute to women receiving unsatisfying and low-value work assignments and being passed over for career development opportunities. These factors, combined with implicit and explicit ingrained sexual harassment, also present barriers to women's advancement. Fourth, the culture of professional ideology, and the differing ways in which men and women understand their careers and those of other men and women, also contribute to the problem (Seuffert *et al.*, 2018, pp. 39–45; see Law Society of New South Wales, 2002; Jaffe *et al.*, 2016; Wald, 2010; Pinnington and Sandberg, 2013).

In response to these problems a raft of initiatives designed to address gender diversity in leadership positions have been identified and implemented in law firms. In recent years research by academics and professional bodies in the United States and Canada has identified current best practices among these diversity initiatives (see Rhode and Ricca, 2015; Jaffe *et al.*, 2016; Bouchard and Quansah, 2014). These studies canvass the range of initiatives, sometimes analyse the success of these initiatives, and make recommendations for best practices. The Law Council of Australia's National Attrition and Retention Study (NARS) Report recommended the identification of effective gender equity strategies operating in law firms/legal practices across Australia and internationally in 2014 (Law Council of Australia, 2014, p. 88). There have also been calls for research to be done in collaboration between academics, professional bodies and law firms to further investigate the barriers to women's advancement (Pinnington and Sandberg, 2013, p. 628). This project both responded to these calls for collaborative research and broke new ground by identifying best practice firms and interviewing women about their experiences in those firms.

In Australia the WLANSW's unique project, gathering data on gender and diversity initiative criteria in large Australian law firms from a variety of sources, began in 2012. The data has been presented in a table allowing for comparisons to be drawn across firms, and was made publicly available on

the WLANSW website, and became known as the Data Comparison Project (DCP) (see Seuffert *et al.*, 2018, pp. 33–38). The DCP provides data comparing large Sydney-based national law firms on a number of gender and diversity initiative criteria, including: the percentage of women partners out of all partners; the percentage of women equity partners out of all equity partners; the percentage of partners on flexible time; the numbers of male and female staff taking primary and secondary parental leave in the previous 12 months; the implementation of gender policies and pay audits; billable hour targets; and other criteria. Starting in 2015, the year of the dataset used for the pilot project, the DCP included for the first time the critical information about the relative representation of women among *equity* partners, as distinct from partners more generally. Building on the DCP, in partnership with the WLANSW, the qualitative pilot research project investigates current best practices in gender and diversity initiatives across four of these top-ranked national Australian law firms.

This article begins with a review of the best practices on gender diversity initiatives identified in the international research, and a discussion of the qualitative component of the research project, including an outline of its methodology and its “best practices” analytical framework. It next presents the findings on current best practices in Australia, including a number of innovative initiatives that, we suggest, go beyond the best practices identified in existing research. All of the managing partners in the firms that participated in the research acknowledged that there is more to be done, and the discussion of diversity initiatives includes the research participants’ identification of ongoing problems across a number of areas. We also recognise that a number of studies conclude that diversity training and other diversity initiatives do not significantly increase representation or advancement of targeted groups. We argue that structural change to law firm and partnership structures and models will be necessary to achieve significant gains in women in leadership (Rhode, 2011, p. 1069; Rikleen, 2015, p. 3). Finally, we conclude by considering the next steps for research in this area, based on the findings of this project.

A best practices methodology

The pilot project was designed to identify best practices in facilitating the advancement of women in law firms, and to assess women’s experiences of these best practice initiatives, at a sample of law firms in Sydney. It commenced with a review of the research internationally on best practices, and the identification of Australian law firms ranked highly on gender diversity criteria by the WLANSW DCP (see Seuffert *et al.*, 2018). This section briefly summarises the best practices identified internationally and the methodology of the WLANSW DCP before moving on to the qualitative methodology used for the pilot project.

As discussed in our previous article, recommendations from studies on best practices in gender diversity initiatives are remarkably consistent (Seuffert *et al.*, 2018, pp. 47–49). Best practices start with initiatives prior to law school to attract young women to the profession. A commitment to diversity at the top of the firm, reflected in recruiting targets, performance evaluation and reward systems, is crucial (Rhode and Ricca, 2015). Attention to gender issues and the implementation of diversity initiatives in retention, shifting firm culture, professional development and leadership are also important. Other important diversity initiatives include programs such as mentoring, affinity groups and work/life/family balance policies that recognise and encourage diversity. Flexible work, part time and job sharing policies are also identified as part of best practices (Bouchard and Quansah, 2014; Rhode and Ricca, 2015). Facilitating cultural change through programs such as training for unconscious bias is also necessary. Self-assessment through periodic surveys, interviews with former and departing lawyers, bottom up evaluations and ongoing monitoring are key recommendations (Jaffe *et al.*, 2016, pp. 52–53; Bouchard and Quansah, 2014, p. 24). Recommendations in relation to structural barriers include: calling for transparency in criteria for promotion to partnership and determining compensation for partners; providing equitable recognition of credit for attracting clients; developing client business and loyalty; and managing and expanding client relationships, as well as rewarding behaviours that promote institutional sustainability, such as leadership and committee participation (Rikleen, 2013, pp. 31–45; Sommerlad, 2016, p. 62).

The Australian and international scholarship and professional body reports suggest that current diversity and inclusion initiatives across the private sector are not resulting in significant change to advancement, retention and attrition statistics for women (Rhode, 2011, pp. 1069–1072). However, the WLANSW DCP highlights the fact that some firms have made better progress than others in increasing the numbers of women in senior and leadership positions. The 2015 version of the DCP, used for this project, reveals that women made up more than 50% of the Senior Associates at 90% of the firms, more than 60% at 40% of the firms, and over 70% at 20% of the firms (with two firms having over 80% female Senior Associates). The extraordinarily high percentages of women at Senior Associate level also suggested that Senior Associate may be, statistically, the career pinnacle for women. Further, the highest percentage of women equity partners at a listed law firm was 32.8%, followed by three of the remaining 39 firms with above 25%, and the lowest at zero. Of the 40 largest firms seven have over 20% female equity partners. There are firms where all, or almost all, of the salaried partners are women. While the percentages of women partners have grown, albeit slowly, over recent decades, the breakdown between salaried and equity partners reveals that the numbers of women partners generally hides the low percentage of women equity partners.

A small sample of four of the large Sydney firms included in the DCP dataset was chosen for the pilot project. Firms near the top of the chart were chosen, two with high percentages of female equity partners, and two on the basis that they had initiated innovative strategies designed to retain women lawyers. Firms were initially approached through letters to managing partners signed by both the researchers and the President of the WLANSW. Six firms were approached in all, four of which agreed to participate. In view of the small sample of firms participating in this pilot project, it is acknowledged that a full picture of diversity and inclusion practices operating within the large firms is not possible. However, it was intended that the four firms, selected for their rankings and innovation, would provide a sound snapshot of current best practice and leading innovation.

Written diversity strategies, policies and program information were requested from each firm that agreed to participate. Four lawyers at each of the four firms were interviewed: the managing partner and three female lawyers – an equity partner, Senior Associate and a lawyer, all of whom were randomly chosen from a list of female lawyers provided by each firm.¹ Information about which women were to be interviewed was not shared with the firms. The women were given the opportunity to be interviewed outside of the firm. While the interviewees were randomly chosen, there was some diversity in the group, including single and married women, women with children, some women who defined themselves as gay, and women of culturally and linguistically diverse backgrounds. A number of women had practiced at other firms, or as part of teams of in-house Counsel at corporations or banks.

The interviews conducted were semi-structured in nature and questions were tailored to the position of the participants. The questions were based on the themes and recommendations for best practice identified in scholarly research and professional body reports, summarised above, and also included open-ended questions allowing room to identify other issues not directly addressed through the questions. Questions also addressed best practices not yet identified in the research, and the interviewees' views on the most effective initiatives adopted. The scholarly literature on best practices was introduced into the interviews in order to ensure space for the discussion of best practices, and to allow for the exchange of information and brainstorming.

Interviews with managing partners also reflected the research on best practices, beginning with questions regarding a commitment to diversity at the top of the firm and whether, and how, the board or management committee was actively engaged in diversity and inclusion. These were followed by questions on whether the firm had recruiting targets, mentoring and affinity groups (at all levels), professional development for diversity, and other programs. They were also asked whether the firm rewarded managers for implementing diversity initiatives and meeting diversity goals, and whether they engaged in self-assessment through periodic surveys, bottom-up evaluations of diversity initiatives, ongoing monitoring and exit interviews with departing

lawyers. The criteria for partnership and its transparency and availability in writing were next explored. Finally, some open-ended questions on the most effective strategies and initiatives that had been implemented were posed.

We considered potential issues in relation to interviewing “elites”, including equity and managing partners (Harvey, 2010, pp. 195–196 (defining “elites to include senior management positions); see also Lancaster, 2017; Mikecz, 2012). The possibility of elite participants” assuming authority, taking charge and expecting deference in the interviews was also considered (Lancaster, 2017, p. 96). As senior academics with legal practice backgrounds, no issues related to power differentials between interviewers and interviewees were anticipated or identified (Mikecz, 2012, pp. 483–484). While there was some “taking charge” of the conversation in the interviews with managing partners, all of the interviews stayed on track, and all research questions were answered in each interview. Indeed, all of the managing partners seemed eager to discuss their firm’s diversity programs and initiatives. This enthusiasm on the part of managing partners may be part of the reason these firms were highly ranked in the DCP.

The questions asked of the women lawyers paralleled those put to managing partners on best practices. They began by assessing the availability and their awareness of firm policies and initiatives, as well as their perception of the effectiveness of these. The firms’ communication of information about the pathway, process and criteria for partnership, and the women’s assessment of its transparency, effectiveness and equity were next explored. Perceptions of firm culture and experiences of conscious or unconscious bias or discrimination, or any other barriers affecting advancement within the firm were also canvassed. The foci of these interviews were determined by the seniority, previous practice, life experience and differing experiences of their firms of each of the women.

The response rate for women participating in the project was high, with only two of the women approached choosing not to participate in the research. Reluctance to participate among these two women may have been due to time pressure, particularly for women working flexibly, or to hesitation about conveying negative experiences about a current workplace. The interviews with the women were more loosely controlled than the interviews with managing partners, allowing some tailoring to the seniority and particular position of the women, in order to elicit relevant experiences. Generally the women who participated seemed to share their experiences openly, and appeared eager to talk about gender in their workplaces, their own progression, and their views of the firms more generally.

Interviewing lawyers across different levels of seniority provided a range of perspectives on diversity initiatives and their implementation, as well as insights on barriers to future advancement and ideas for improvement. While the purpose of the interviews was to gather and share information on best practices, rather than to add to the well-documented existing critiques

of law firms, the problems and critiques raised by interview participants are included in the findings. To exclude the critiques would provide a skewed picture of practice in large law firms, and would perpetuate the erasure of women's experiences.

The interviews were professionally transcribed and analysed for themes using NVIVO software. Comprehensive coding was undertaken for each interview, initially by a research associate, and then by the two researchers as well. On completion of the coding, a thematic analysis was conducted based on the themes identified. This allowed us to track the best practice issues raised in the context of the national and international literature. For more detailed coverage of the methodology and analytical framework employed in the research see the full Pilot Project Report (Mundy and Seuffert, 2017).

Pilot project findings: current best practice in Australia on gender diversity

This section presents the analysis of the interview data. Four of the top-achieving national law firms in Australia on gender equity criteria are collectively engaging with many of the best practice initiatives for diversity and inclusion recommended by the current national and international research and scholarship. The research also identified some practices and initiatives that are innovative in light of the international literature in the area, suggesting a "gold standard" beyond international best practice, which firms in Australia and elsewhere should consider implementing.

The best practice framework for the research and methodology is also reflected in this discussion of the findings. Commitment to diversity at the top of the firm and firm culture were perceived by participants in this study, and in the research more generally, as crucially important to achieving diversity and inclusion in law firms (see Epstein *et al.*, 1995). This part starts with those two areas, which affect the firm as a whole, and then moves on to: (3) diversity and inclusion initiatives; (4) mentoring and affinity groups; (5) flexible work policies and practice; and (6) partnership.

Commitment to diversity at the top of the firm

Australian and international research suggests that a commitment to diversity at the top of the firm is critical to achieving diversity and inclusion objectives (e.g. Rhode and Ricca, 2015, p. 2502; Law Council of Australia, 2014, pp. 83–84). Active support for diversity initiatives by senior management has been identified as amongst the most effective diversity strategies (Winmark and Reed Smith, 2011, p. 14). The extent of a firm's commitment and senior-leader support "exert a powerful influence" on the career goals of lawyers and their desire to stay at a firm (Brodherson *et al.*, 2017, p. 5).

Rhode & Ricca's research, in which they interviewed the managing partners of top national law firms and the general counsel of Fortune 100 corporations, also argues that such commitment must be one that is built into the values and identity of the organisation itself (Rhode and Ricca, 2015, pp. 2486, 2502). Leaders must take every opportunity to communicate their commitment to diversity and inclusion (Rhode and Ricca, 2015, p. 2502) and, most importantly, women must be convinced of this commitment. Recent research undertaken in the US in which more than 16,000 lawyers from across 222 law firms in America were surveyed, found that while all law firms *said* that gender diversity is very important or was a priority for them, only 36% of women actually believed this to be the case, compared to 62% of men. In addition, fewer than half the women believed their firm was doing what was needed to improve gender diversity, compared to 75% of men (Brodherson *et al.*, 2017). The report noted that while "law firms have many of the right policies and programs in place to improve gender diversity, more can be done to translate stated commitments into measurable outcomes" (Brodherson *et al.*, 2017, p. 2).

The NARS Report argues that senior leaders must "actively convince others of the need for the change" and make a "compelling business case for change" (Law Council of Australia, 2014, p. 84). This suggests that diversity and inclusion is not simply concerned with "doing the right thing" but is seen to be vital to the economic success of a firm (Rhode and Ricca, 2015, p. 2487).

The findings of the WLANSW pilot project indicate that the top performing firms participating in the study indicate a strong commitment by managing partners to achieving diversity and inclusion goals. However, while some women spoke positively about the commitment from the top, others felt that this commitment was not shared among all of the firm leaders, or indicated that prioritisation of recognition through industry awards came at the expense of real change within the firm.

The managing partners all expressed a strong commitment to diversity and inclusion, identified as leaders in the diversity space and reported on a range of endeavours to tackle gender issues within their firm. They all also acknowledged ongoing challenges in relation to gender diversity, particularly at the senior and partnership levels, and expressed commitments to ongoing reflection and a desire to do better:

I see us as having a leadership position in gender diversity in any event. But I think there's a lot more that we can be doing to really ensure that we are best-of-market globally, in terms of ensuring that we put in place the right mechanisms to improve our gender diversity ... Encourage women to get through to partnership, and to be leaders in leadership roles within the firm. (Comment 1)²

The reference here to "best-of-market globally" suggests that this managing partner has been convinced by the business case for diversity. The fundamental importance of a diverse and inclusive firm to business success was also

acknowledged more broadly (Comment 2). While the business case for diversity may have the advantage of garnering support, it does have its limitations (see Seuffert *et al.*, 2018, pp. 53–54).

Three of the firms had established diversity committees comprising partners at both the business unit, or practice group, level and leaders of the management, or senior management level and Chaired by the Managing Partner. All committees report to the firm's executive and all initiatives are approved at the executive level. The firm without an identified diversity committee vests responsibility for diversity and inclusion in the executive committee, which should signal the importance of diversity goals to everyone in the firm, and avoid some of the problems identified with the effectiveness of diversity committees. This includes: their reduction to conduits for diversity materials; the perception that gender equity is a "women's problem" that does not warrant the attention of powerful partners; and the relegation of women to the diversity committee while men sit on committees related to leadership and governance (Jaffe *et al.*, 2016, pp. 37–38).

Another manner in which to ensure that diversity is a management and leadership issue is to include diversity and gender equity key performance indicators (KPIs) for managers. Two firms had diversity KPIs for managers, although for one firm it was only the managing partner who had such KPIs, so only one firm had diversity KPIs for managers such as practice heads. Executive level commitment was also apparent through the adoption and implementation of a range of formal strategies within the firms, including leadership, mentoring and sponsorship programs, flexible work policies, affinity groups, practical support services and, as mentioned, targets (see below for more on firm strategies related to diversity and inclusion). One firm had specific targets, of 40% of new partners being women, 25% of new equity partners being women and 25% of leadership roles being occupied by women (Comment 3). Leadership roles were defined as senior management roles, including sitting on the board, being on the executive team, practice head leaders, and significant client relationship roles.

There were positive comments about the commitment from the top by the women lawyers. This interviewee was positive about the commitment to diversity and inclusion of both the managing partner and her business unit leader, and stated that it was also communicated more broadly:

I think generally in their support of the initiatives that the diversity committee comes up with. ... I think there's a lot of pride – I think we got a work place award recently, or we're about to. ... There's a lot of support from the partners to say that's fantastic, that's well done. ... [the managing partner] sends out quite a few communications to the firm as a whole. Whether it be reporting on things that we're doing internally, or things that we've done externally, or recognitions we're achieving externally. You sort of get a message that it is something he's proud of, and wants to encourage. ... [and it also comes from] my business unit leader (Comment 4)

Here the message that the firm is intending to communicate, of its position as a leader in the gender diversity area, was received consistent with that intention. However, some women felt that the commitment from the managing partner was not broadly shared among all of those at the top of the firm, or at least among all of the partners. This lawyer expressed uncertainty about the level of priority given to the firm's commitment to diversity relative to other priorities and commented that, while her firm "brands itself" as having one of the highest proportions of female partners, she didn't feel there was a widespread commitment:

I think in practice and the way I see it play out, certain behaviours that people just get away with, certain, generally older male partners who are used to a way of working who think harassment is acceptable and things like that, I wouldn't say there's necessarily a commitment from them ... I think the focus is [to] make money first and they don't seem to be able to connect that. [There's] very short term thinking often; the old 'churn and burn'. So despite all studies which show increased women and increased other types of diversity in companies make you more profitable, it's sort of here's a guy who's going to work and work and work and I trust him because he's like me so I'm going to bring him under my wing. (Comment 5)

The suggestion here is that the rationale underpinning the business case for diversity has not convinced all of those in the partnership. It highlights that a sexist culture in a firm may be resistant to change, and that progress may be uneven even in firms that are making significant efforts in relation to diversity and inclusion initiatives. Commitment from the top of the firm should also be evidenced in regular self-assessment and evaluation of gender equity and diversity practices (Rhode, 2011, p. 1069). One managing partner provided a detailed description of the firm's process for monitoring and evaluating workflow for gender bias and pay equity, which was developed in response to a finding of gender bias. The firm monitors workflow to attempt to ensure work is allocated on a merit and capacity basis rather than, as he said, "on a gender basis" (Comment 6). A "series of programs" were implemented to ensure pay equity, including reviewing the performance appraisal process, and lawyers' pay and bonuses, for gender bias. Pay rises and bonuses are compared to performance ratings to attempt to ensure that pay reflects performance without gender bias intervening. This involves tracking gender pay gaps to their source, as the managing partner explained:

You look firstly at a wider basis, and say, well, what's the percentage of men that are getting bonuses, what are the percentage of women that are getting bonuses, and what are the percentage of men that are getting pay rises. [W]hat's the average pay rise, what's the average female pay rise. Then you'd see what that overall picture is. – [Y]ou might see from that that there's a weighting towards men getting more bonuses.

Then we would look on a more granular level and say, well, where is that occurring? Is it occurring in particular practice groups? Then we work out which particular practice groups they are, and then we can actually have discussions with the practice heads and

check that they've had unconscious bias training. Discuss with them what their actual rationale was for doing that, and then we see the types of reasons that come up. For example, the partners might say, well, we see that more men are being given bonuses because their hours are a lot higher.

Then we can have the discussion ... – well, why are their hours higher? Is it because the type of work that you've – ... has there been bias in terms of you giving them more work than you're giving your female associates? Or are you not taking into account the fact that the female associates may be doing the work more efficiently, and that's why they've got less hours. So you can have those discussions, and ensure you get – dig beneath, and ... – try to find out the actual reasons. (Comment 7)

This process is an example of a top-down commitment to drilling down through firm data on bonuses, from the firm level to the practice group level and then to individual hour and pay disparities, engaging in difficult conversations with practice group leaders. It provides an illustration of leadership from the top and sends a clear message that the firm management is actively monitoring the distribution of work and the allocation of pay and bonuses in attempts to ensure that gender bias is not operating. Research suggests that this type of oversight is necessary, although perhaps not sufficient, for combatting gender bias in law firms. The objectivity of the billable hour as a measure of productivity for lawyers has been questioned (Rikleen, 2015; Law Society of New South Wales, 2002; Jaffe *et al.*, 2016; Wald, 2010, pp. 2256–2257). Further, the suggested inquiry in the quote into whether women are given fewer hours, and whether they are more efficient, is buttressed by the international research that suggests these may be two key reasons for women billing fewer hours. However, the literature highlights other possible reasons: women acting on committees that cost time in billable hours; the quality (not just the quantity) of work received by or assigned to women; the greater commitment to *pro bono* work by women; and a misperception of how hard women work leading to devaluing the hours worked (Jaffe *et al.*, 2016, p. 18; Rikleen, 2015, pp. 9–10). Effective monitoring processes might also consider these impacts on billable hours.

Leadership from the top of the firms, and the prioritisation of recognition of diversity and inclusion initiatives was also reflected in the national and international awards received by these firms; three of the four firms were designated as “Employers of Choice”, a recognition program offered by the Workplace Gender Equality Agency (WGEA) which aims to encourage, recognise and promote active commitment to achieving gender equality in Australian workplaces. Individually, one firm has also been internationally awarded for their mentoring or other programs connected with diversity and equity (Comment 8) and others are recognised members of “Champions of Change”, an industry based diversity program (Comment 9). Two of the firms are signatories to the Law Society of New South Wales Charter for the Advancement of Women in the Legal Profession.

Firm culture

Ensuring a fair and inclusive culture was seen as *the most important* foundation for achieving a truly diverse and inclusive workplace by all managing partners. As one managing partner commented, “if you don’t have the culture right you can have all of the programs and everything but they’re not going to work” (Comment 10).

The NARS Report identifies the detrimental impacts of having few women in senior positions, including on firm culture and on women lawyers’ sense of connection and belonging within the workplace. A lack of women in senior positions contributes to a sense of alienation and the perception of a male-dominated culture that favours men for advancement. Such a culture tends to reproduce itself, with men in the top positions. Addressing issues of firm culture and providing mentoring and women role models are all necessary to facilitate the advancement of women in law firms.

Two broad approaches to responding to male-dominated firm cultures emerged from the interview data: one emphasised structurally integrated programs while the other was said to be more “organic” in nature. Most firms had introduced structural diversity programs. One firm advocated for an “organic culture” (Comment 11), meaning that “people will promote talent regardless of ... the stereotypical prejudices” that often intervene (Comment 12). The managing partner emphasised the importance of diversity in the leadership team, and an open leadership style, in creating an open firm culture, specifically referring to sexual orientation as well as well gender diversity.

A diverse leadership team whose values are openly acknowledged, was seen as signalling the importance of diversity to the firm, and as responding to historically entrenched masculine cultures. This is consistent with academic arguments that a distribution of power and influence among all identity groups in firms is a necessary condition for both better business outcomes and justice (Carstens and De Kock, 2017, pp. 2110, 2114–2117).

There were a number of positive comments from women lawyers about their firm’s culture and commitment to diversity and inclusion. One Senior Associate noted that her firm’s strong culture on diversity emanated from its leadership, and said that their “innovative” diversity and inclusion initiatives “send a strong message that the firm cares about you [which] promotes retention [and] promotes attracting [new] talent ... to the firm” (Comment 15). A junior lawyer compared the environment at her current firm to her previous firm, stating that “the environment was more conducive for women to be able to put their ideas forward, and feeling able to be heard without ... a reaction from the males or the male partners; ... it’s a different environment” (Comments 16–19). Her comment recognised that firm leaders can establish an inclusive firm culture, one where everyone’s views are important, by recognising and responding to the ideas of women.

A wide range of male partners demonstrating their leadership and commitment to creating a positive and inclusive culture was also identified as crucial, with recognition that “a lot of it comes from the male partners rather than the female” (Comment 20). The importance of male partners at the top of the firm actively setting the culture and tone of the firm, signalling what is acceptable and what is not, and being open to hearing from associates regarding how initiatives and careers are progressing, is also more widely recognised as important. (Carstens and De Kock, 2017, p. 2113).

The culture of a firm was also identified as mediated by the practice group in which one was located. For one woman lawyer a particularly “blokey” and sexist culture in a practice group was coupled with unconscious bias in work flow and entrenched patterns within the group that disadvantaged women (Comment 21). The interviews also indicated more generally that, to some extent, a “blokey” culture comes with the territory (Comment 22).

Two firms had a notable focus on aspects of diversity other than gender. One firm had targeted Indigenous initiatives while at another firm there were a range of initiatives on inclusion of LBGTI people, including awareness training (Comment 23). However, women lawyers at the other firms commented on the need for their firm to expand their focus on other diversity or intersectional experiences, noting that “there’s a whole different layer ... we need to dig deeper ... more could be done not just around gender diversity but LBGTI [too]” (Comments 24–27). Race and ethnicity were also mentioned as aspects of diversity that needed attention. To the extent that firms identified a focus on diversity other than gender, these included LBGTI and disability (Comments 28–29).

Diversity and inclusion initiatives

Firm culture and a commitment from the firm leadership are widely considered to be two of the most important aspects of achieving diversity and inclusion. As well as addressing these two areas in a number of ways, the firms that participated in the research have implemented a range of specific initiatives and strategies designed to improve diversity and inclusion, many of which reflect best practice as identified within the international literature. The identified strategies include: targeted initiatives at undergraduate student level, initiatives designed to attract and retain talent within firms, professional development, leadership training, flexible work, provision of superannuation payments to those on parental leave and KPIs on diversity goals for managers at all levels. Mentoring and affinity groups, discussed below, are also considered diversity and inclusion initiatives. The best practice research suggests that most of these initiatives are necessary, but perhaps not sufficient, for success in changing firm culture, and for the attraction and retention of women to ensure a diverse firm, particularly at the partnership level.

As discussed above, three of the firms had established diversity committees which are made up of partners at both the business unit, or practice group, level and leaders of the management, or senior management level and Chaired by the Managing Partner. The fourth firm chose to locate responsibility for diversity and inclusion with the executive committee. Three of the firms indicated that support was provided from Diversity and Inclusion Managers. Other committee-based initiatives included conducting unconscious bias training for committee members sitting on partner admissions committee and ensuring a balance between both genders was present (Comment 30).

Two of the firms indicated that they had provided unconscious bias training. Building on recommendations from the NARS Report, the Law Council of Australia endorsed unconscious bias training in March of 2017, making available a program developed specifically for law firms in Australia. Completion of this program counts towards the required Continuing Professional Development units required by professional associations in Australia. As a result, more law firms and individual lawyers are likely to have had this type of training in the future. However, it is unclear whether unconscious bias training in law firms is effective at reducing bias, with only limited studies on measuring change, in other areas and on other prejudices, and with a particular paucity of longitudinal studies measuring change over time (see Girod *et al.*, 2016; Paluck and Green, 2008). Research in other areas suggests that outcomes differ depending on the particular training provided, with some types of training being ineffective, or even entrenching gender stereotypes and perpetuating biases (Lai *et al.*, 2014).

Unique to one firm was the targeted offer of practical administrative support services to key talent at peak work periods, which is designed to assist with the balancing of work and family commitments. This was identified as an important attraction and retention strategy by management:

If we can just take some of the pressure off the home list, because at the end of the day, you're more profitable for me here – the other day, as I said ... , if I can get someone out to change a lock at your place and you give me another hour, guess what – my service (Comment 31)

This view, and the initiative in general, was supported by lawyers at the firm (Comment 32). One woman discussed this initiative in the context of her experience at other firms with a focus on gender diversity that nevertheless provided little practical support for managing everyday tasks at home while doing deals at work:

I've been in a few law firms and all [were] award-winning employer of choice for women, and ... none of the firms I've been at have given me practical tools to help me. [They can tell me till] they're blue in the face, that we've got all these policies to help you, but ... I have never been in a firm that will actually say, well, here – here's something that'll help you tomorrow. I will take this off your plate tomorrow. It has made a huge difference. (Comment 33)

The statement here regarding other firms that this woman has worked at resonates with the one above about disjuncture between “branding” a firm as committed to gender diversity, and material, widespread commitment and culture change in everyday operation. Organisational theorists such as Schein have shown the importance of leaders acting consistently and systematically in their messaging and behaviours about what they believe in or care about (Schein, 2016, p. 185). What leaders “measure, control, reward and otherwise deal with systematically” are powerful mechanisms for signalling what is important to an organisation and ultimately affecting cultural change (Schein, 2016, pp. 184–185). Here, this woman identifies the availability of administrative support services as something that made a real difference to her life, and that allowed her to focus on the work she enjoyed.

The result was that “I actually want to do more for work, because I’m so in love with the firm that I want to do well for the firm” (Comment 34). This level of gratitude for a relatively minor accommodation, or recognition of the domestic duties carried by women, is reflected in research on workplace flexibility (Walters and Whitehouse, 2015, pp. 769–782, 779–780). In a study on the prevalence of a “sense of entitlement” to workplace supports for family responsibilities it was found that rather than having a sense of entitlement the majority of women resigned themselves to the lack of workplace support, “accepting personal responsibility for the mismatch between their needs and those of the organisation ... where supportive conditions were accessible, these were likely to be seen as something to be grateful for, or due to good luck” (Walters and Whitehouse, 2015, p. 779). This was despite an awareness of the injustice of a lack of workplace supports, and their awareness of the organisational causes of the lack (Walters and Whitehouse, 2015, pp. 769–782). Further, women with access to workplace support policies demonstrate greater commitment to the organisation and are less likely to intend to quit (Butts *et al.*, 2013, pp. 1–25).

The examples of tasks delegated to the services firm evoked a discussion in the interview about how all working women need “wives”. Further, the firm, after some publicity about the use of the service, received emails pointing out that by emphasising the provision of this service to women (although it was not limited to women) they were perpetuating the assumption that these types of tasks are “women’s work”. Providing the service, it was said pragmatically, is “dealing with reality”, yet arguably it serves to problematise lawyers’ “lives” rather than addressing what are problematic work practices and stereotypical views of domestic tasks as women’s responsibility (Thornton and Bagust, 2007). However, it would be ironic if concerns about perpetuating assumptions about women’s responsibility for domestic work was seen as a reason not to provide such support. On the other hand, the discussion also raises the question of the extent to which current diversity policies respond to this issue, and if not, of what other policies might be required to do so. For example, there is research on policies designed to encourage men to take

parental leave, which may result in men taking on more of the carer and domestic tasks long-term (Farré and González, 2017). In one study it was found that exposure to paternity leave can result in markedly less sex specialisation in time allocations and labour supply in relation to household labour- that is, men will do more of it (Patnaik, 2019).

Other initiatives that were identified as useful, but were not common across a number of firms, included: behavioural development and training programs (Comment 35),³ coaching, including voice coaching sessions (Comments 36–39, 40), business development programs (Comment 41), panel sessions (eg, a “lean in” type group), networking events (Comments 42–43), and groups for working parents (Comments 44–47; 48–51) and people with carer responsibilities (Comments 52–53). There were also a range of practical strategies implemented within different firms to meet particular identified needs. These included a kids’ room for school holiday periods (Comment 54), provision of presentation skills development workshops (Comments 55–57) and IT strategies to support working flexibly and remotely (Comment 58). While it is difficult to assess the effectiveness of these initiatives without formal evaluations specific to each, it is worth noting that a number of these initiatives correlate with best practice in diversity and inclusion as discussed within the current international literature.

Overall, the four national firms that participated in the research are engaging in most of these initiatives, which may have resulted in their higher percentages of women partners and equity partners, and their high rankings in the DCP. However, even these leading firms have some gaps to fill, particularly around the provision of superannuation payments while on parental leave, KPIs on diversity goals for managers at all levels, and more broadly available leadership training.

Mentoring and affinity groups

Mentoring has been identified as a key strategy for advancing women in law firms since at least the mid-1980s (Ramaswami *et al.*, 2010, p. 694). Having a mentor has been associated with higher earnings, greater job satisfaction and greater likelihood of attaining partnership status, and quality mentoring relationships have been associated with work satisfaction and retention (Ramaswami *et al.*, 2010, p. 694). However, in professions such as law, which are male-dominated and male gender-typed, it is important that the mentor is already part of the leadership elite, usually a senior male, and these people may be less willing, and have less time, to mentor women (Ramaswami *et al.*, 2010, p. 696). The seniority and power of a mentor can help the mentee attain social capital, including through the enhancement of senior decision-makers’ perceptions that the mentee is “leadership material” (Ramaswami *et al.*, 2010, p. 697).

This focus on the necessary seniority and elite status of mentors necessary in male-dominated professions suggests a distinction between *mentoring* and *sponsorship*. This distinction is between mentoring groups and programs formally established within firms, and “sponsorship” by a powerful partner who advocates for a “protégé” associate (Winmark and Reed Smith, 2011, p. 22). A “mentor” can be defined as someone who “provides advice, builds self-esteem and is a sounding board”; mentoring may typically be conceptualised as a “one way street” in which mentors give and mentees receive (Hewlett, 2013, p. 42). Mentoring is said to require interpersonal rapport, which may include acceptance, reassurance, conversation and story-telling (Ashenurst, 2010–2011, p. 130).

In Australia, the number of firms initiating mentoring programs has increased steadily over the past two decades (Rikleem, 2015, p. 4), with professional bodies also participating; for example, in New South Wales the Law Society initiated a Women’s Mentoring Program for lawyers 10–15 years post-admission in 2012 (Law Society of New South Wales, 2013, p. 5). However, almost one third of women surveyed (32%) identified the limited access to a mentor as a key reason for their career dissatisfaction compared to less than one fifth of men (19%) (Law Council of Australia, 2014, pp. 20, 26). The need for mentoring to be more widely promoted, offered as structured in-house programs, and to be specifically targeted at different career stages, was also identified (Law Council of Australia, 2014, pp. 5, 8). These findings are mirrored internationally (Law Council of Australia, 2014, p. 8). A mentoring relationship for women lawyers is seen as particularly beneficial as women tend to face greater barriers to their professional advancement, organisationally, interpersonally and individually, than do their male counterparts (Wallace, 2001, p. 366). Most mentor relationships developed informally and came about through existing networks.

A “sponsor” is a senior leader who believes in an individual and is willing to “go out on a limb” on that person’s behalf, advocates for their next promotion, and provides “air cover” so the person can take risks (Law Council of Australia, 2014, p. 26; quoting Hewlett, 2013, p. 30). The sponsor plays a more active role than a mentor in helping to advance a mentee’s career; they generally believe in the mentee and actively advocate on their behalf for their next promotion (Hewlett, 2013, p. 26). The sponsor spotlights the person’s talents, puts them forward to key roles and coaches them to succeed (Hewlett, 2013, p. 31). The sponsor/protégé relationship, it is sometimes said, is a reciprocal one, in which the protégé delivers in exceptional ways, is trustworthy and loyal, and reinforces a distinct brand of the sponsor (Hewlett, 2013, p. 41). This distinction between mentoring and sponsorship may be crucial to understanding the advancement of women in law firms—while mentoring programs have proliferated, few of them appear to go so far as to provide sponsorship, which may continue to operate in informal manners that exclude or disadvantage women.

Successful men may be less willing to sponsor women as they are less likely to see them as furthering their personal brand, and for a variety of other reasons (Hewlett, 2013, pp. 81, 131, 140).

Consistent with the distinction between mentoring and sponsorship that we have noted, the NARS Report also identified the need for greater participation in informal sponsorship relationships and to promote the involvement of senior leaders and decision-makers in these.

However, mentoring may not provide the targeted advocacy necessary for career advancement. This quote from a participant in the pilot project recognises how mentoring programs tend to provide general advice rather than being targeted at sponsorship for partnership:

I think the mentoring program is ... probably less about making your way to partnership. It's not meant to be about that, it's meant to be about you just having a general chat with somebody about – it might be about your progression, it might be about a specific issue that you're having with a client that you might want some advice on how to deal with something. It's not specifically about your progression as such. (Comment 58)

It may be that early calls for “mentoring” in large law firms and more generally resulted from observations of sponsorship relationships between elite male leaders of the profession and their protégés. However, our interviews indicate that the mentoring programs developed in response rarely result in sponsorship relationships.

Calls for mentoring of women lawyers as a key strategy for inclusion and advancement have been embraced by all of the firms participating in this pilot project, which offer some form of mentoring opportunity for their lawyers and for those Senior Associates on a partnership track. As these firms are at or near the top of the WLANSW DCP dataset, they are likely to represent some of the highest engagement with mentoring in Australia. The level of formality in the programs differed in each firm. A mix of senior and junior associates from across a range of practice areas meet informally over coffee about once a month, to discuss work and any issues of importance to them (Comments 59–60). Senior women mentor junior women and the meetings were identified as useful and very successful by some women. Two firms had affinity groups for different identity groups or groups with a shared interest or concern, such as working parents and carers, voice coaching for women, women's networking groups, a women's diversity sub-committee and an LGBTI diversity sub-committee.

There was some scepticism about the effectiveness of affinity groups, and related events, across the firms participating, in achieving real change in firms:

But ... – I don't know what it achieves. I also know there's a reasonable level of resentment about it from the young men in the firm ... They see women as equal to them and they don't get why there has to be other things for women. Then I see – my view is,

because men just do it anyway. They have – their own networks and there’s – through unconscious bias men like men. (Comment 62)

This scepticism echoes findings in research internationally. While affinity groups may be useful in generating community among women, more broadly they may achieve little, reinforce the “othering” of women in firms, and result in less time for women to engage in activities that are more directly career-enhancing (Jaffe *et al.*, 2016, pp. 35–37).

Some firms have mentoring programs where lawyers are assigned a Senior Associate to act as a formal mentor, which were identified as helpful (Comments 63–64; 65; 66–67). The opportunity to choose a mentor, or indicate a preference for a mentor within or outside their practice group, was identified by some women as important. At one firm, lawyers nominate three people who they would like as mentors and one is assigned (Comment 68). Having the person to be mentored choose the mentor, or contribute to the decision-making, is a good idea. Providing senior women mentors and role models who either have no children or work long hours with the support of full-time childcare may result in their perception as “negative” role models, lacking in work life balance, and not to be emulated (Durbin and Tomlinson, 2014). Women who want to spend time with families may prefer mentors who have successfully managed their work to allow for that.

Two firms have leadership training programs targeting Senior Associates who are identified as on partnership track. These programs provide training in leadership skills (Comment 70), including working with colleagues, team management and managing staff more generally. Mentoring for partners, including new partners and senior leaders was even rarer, although it was identified as a need at some firms:

certainly for our senior leaders we’ve had peer mentoring which is really fantastic – that was part of a leadership program we were all doing – but that partner mentoring will be introduced across for all partners. (Comment 71)

The NARS Report suggests that the focus on mentoring, and the development of mentoring programs, has not resulted in producing sponsorship relationships for many women who would like them. Where formal sponsorship programs do not exist, information about building a sponsorship relationship may be communicated informally:

I was just lucky that when one of those women left they said you kind of need to pick which train you want to get on and stick on that one to get the workflow to get on the good deals. So they said if you can pick this guy’s train because he’s on the partnership track ... Like it wasn’t anything that was assigned by the firm but he is really great and we have a really good relationship but there’s no formal mentoring programs or anything like that. (Comment 72)

As this quote indicates, in the absence of sponsorships programs, taking a proactive approach to building such relationships may work for some women.

One firm has set up a sponsorship program for Senior Associates. This program followed participation in a leadership pathways program:

[Women] would enter into a sponsorship relationship with someone within the partnership that would advocate for them and that would challenge them and their supervising partner, and to make sure that they are staying relevant – that they’ve got a voice at the table, even though they may not be at the table and that they’re able to know that someone’s looking out for them. (Comment 73)

This suggests recognition that mentoring alone is unlikely to be sufficient; instead a consciously tiered series of programs that begins with mentoring and builds to a leadership program, and then a sponsorship program, may be required. A set of tiered programs of this type represents the “gold standard” internationally.

Flexible work, part-time and job sharing policies

All firms had flexible work policies and indicated that they generally encouraged lawyers to adopt flexible work practices. Flexible work options were seen as an important retention strategy for senior staff and key talent and for the advancement of women. A range of working arrangements were identified, most commonly, working remotely from home on a given day when not required in the office for client commitments, and returning from parenting leave to work three days per week. The ability to work remotely varied depending on the lawyer’s seniority and the particular needs and culture of the work unit (Comment 74). It was noted that people across all levels of seniority were working flexibly.

Research has identified a range of problems arising from the ways in which firms deal with those working flexibly, including maintaining client contact, which is necessary in order to stay on a “partnership track” and maintaining the high quality, interesting work, as opposed to routinised, “backroom” work (“pink files”), necessary to achieving partnership (Eastman, 2004, p. 874; Thornton and Bagust, 2007, pp. 795–796). However, at least two participants worked in practice groups with a high proportion of the team working flexibly, and maintained client contact successfully. There were very positive experiences of working flexibly, and of creative and dedicated efforts to make it work for particular practice groups. The challenge is to facilitate maintaining client contact for those working flexibly (to allow them to remain “client facing”) and to continue to do so efficiently and at no extra cost to the clients. The international research suggests that these challenges are often cited to justify taking those working flexibly off of client contact (see Thornton, 2016, pp. 15, 25, 30).

One woman had a positive experience of working flexibly in a litigation group (“traditionally very male dominated”). She noted that her firm emphasised a long-term view of lawyer retention; retaining the best lawyers was critical:

It's pretty clear that at some point I would have children and that certainly wasn't an impediment at all and it was – you're the best person and we take a long-term view of these things – which is we want you to be here in 10 and 20 years' time. ... an investment in the people that we want to be here in the future. (Comment 75)

Interestingly, she noted that the practice group was now female dominated, because when they were recruiting “the better candidates were female”, and she wondered whether they were attracted to the practice group because they could see that it would be possible to work flexibly in it (Comment 76).

Strategies implemented to support senior people working flexibly, including at equity partner level, were also seen as encouraging the progression of women within firms (Comment 77).

One participant reflected at length on the steps taken in her practice group regarding flexible work practices. She started by focusing specifically on the well-trodden path of giving those working flexibly less interesting work, noting that her practice group had rejected this path:

... because our people are intelligent people who want to keep developing in all their ways while still having as far as possible the bargain of flexibility. (Comment 78)

She also discussed grappling with the challenges of sharing work between people efficiently:

So if our solution involves having more people work together which we think means [we] retain skilled people, we need to have people able to brief and debrief each other efficiently so that the team can seamlessly provide the work and not at greater cost. Now there is a lot of challenge in all of that. So how have we thought to deal with this? ... To better pair people so that people can more seamlessly be sort of in a job share. (Comment 79)

The team adopted specific responses to the challenges of retaining trained lawyers, working flexibly and maintaining efficiency, which required rethinking how they work more generally:

We don't silo people in the teams. We want people to keep getting broad experience across a group. We do a wide range of [type of work] across multiple industries. We want people to be broader because it's stimulating for them. They learn more in particular areas of their work and that also is a challenge, because if you had a particular siloed team it would be very clear what you're doing and you could manage these in a more predictable way. (Comment 80)

It is about thinking of the practice group as a team, or a unit, really working together, not against or in competition with each other. It requires building a team “of people, men and women, who wanted to support each other. To have families and have lives and still do great work” (Comment 81). It required taking a step back from the traditional approach to work and thinking seriously about what it would look like to share work in ways that allowed people to both work and live:

That means also seeing workers share work, not single work and once you see it that way you don't need to hold work. You're all supporting each other to grow, to do the best work and to live as you want to live. So perhaps more than parental leave for me the whole approach to our relationships and how ... we were developing practice, was about making living and working work. I find balance a funny word because I don't think anyone ever feels balanced ... You feel more or less degrees of chaos or a bit more comfortable, never controlled. (Comment 82)

Finally, she addressed the elephant in the room: the partners in the group had accepted that finding ways for everyone to do good work and remain stimulated and challenged while working flexibly might mean that they earned less:

... we're looking at a question of setting up a structure where we resource more than we predict we need. Now that would be a big jump, we're going into planning for that so that at times of peak work our people are under less pressure ... but not charge clients for it ... that will mean we will be less profitable. (Comment 83)

Firms and practice groups need to be open to rethinking how they work, and their priorities, if they are serious about embracing flexible work options. Communicating the style of work and the work environment to the clients is also an imperative. But she noted that many of their clients were also grappling with the same issues within their working environments and were very receptive to the approach the team was taking (Comment 84). The bottom line?

[W]e all wanted to do great work and have meaningful lives and that to me is what has been definitive and why I'm here after 22 years and still inspired by it. (Comment 85)

This is the most in-depth discussion of flexible work and work/life balance that emerged from this pilot project. The available research nationally and internationally, discussed above, suggests that it may be indicative of current best practice at large law firms, and therefore may provide an example for other firms, and practice groups, to consider.

Role models of female partners working flexibly, ensuring that flexible work is seen as acceptable at all levels of the firm were also identified as important as recognised by this female equity partner:

... I do think it assists if you've got a female partner who works flexibly because it means you can see that it can be done ... the feedback I'm getting is that if enough female lawyers can see how female partners are managing it, then it gives them confidence that they could do it themselves. My attitude is I work the way I work, I do what I have to do. If I'm here at 10 instead of at 7.30, so be it. But everyone knows they can get me on the mobile or email. I often take calls from clients on the way in, way out.

I think if they see more male partners do it, too [that would be helpful]. (Comment 87)

However, one participant discussed the complexities of being the role model for others. One of the issues for lawyers working flexibly, who may be on a percentage of a full time role, such as 70%, is 70% of what? While the required billable hours may be quantifiable in percentage terms, the other types of work are not so

easily pro-rated, and there are generally no transparent guidelines for what is expected at a percentage. This means that women on flexible work may do more than, say, 70% of these other types of work in order to ensure that they are seen as pulling their weight. At the same time, as role models, they may be setting a high bar. One woman partner commented:

[One woman who we wanted to be thinking about partnership in the near future came back working flexibly] had said, well, I wouldn't want to be a partner because I can't do what you do and what [A, another female partner working flexibly] does. ... Then it's like – okay, by pushing ourselves to make sure that we feel we're contributing, are we having the opposite effect of what we want to? [I]s it actually having more of a negative impact [by implicitly setting a high bar for other women] than a positive impact? (Comment 88)

This woman was eventually comfortable with being open about the difficulties and conflicting feelings about work and family, and the second woman did manage flexible work and is heading for partnership.

But the response to another women saying “I can't do what you do” was to feel guilty about whether she was giving enough time to her children:

[And I couldn't continue the conversation, my response was] my God, I'm such a horrible mother ... I'm not doing enough at home (Comment 89).

Her honesty highlights the complexities for women managing flexible work, families, and being role models thoughtfully and ethically. But her honest assessment of her own motivations for working harder than might have been necessary, and the tension between work and family commitments are evident.

As this example suggests, working flexibly was interpreted as not just working part-time, but also working outside of the firm, and was linked by some participants with work/life balance. One interviewee discussed a panel of partners talking about work/life balance:

They're often a bit disheartening in a way, or very realistic, because the reality is there is no work/life balance to get to those kinds of positions. You – they have full-time nannies or they – lots of them go home, there's – I know there's one partner, for example, who spoke at one of them who goes home at four or five each day, spends two or three hours with her kids, then logs on and works at home till midnight or whatever. So having that flexibility is great, but how attractive is that really, doing that every day, day in, day out? (Comment 90)

Another woman commented on the relationship between an unsustainable work/life balance and the business model of large firms, echoing the comments above that addressed the “elephant in the room”:

No, thank you. It's a tough, tough life. Ultimately, I think the structure of law needs to change and we have to not expect that we're going to work 10, 12, 14, 16 hours a day. Really that's about making money–[I]f you're working 16 hours a day, that's two people's job. ... If it's ever really going to change for both men and women so that

you have a real work/life balance, then it's that, I think. You see, I think women leave and men ultimately get depressed or have drug and alcohol issues. I mean, that's what the research shows. They keep looking at law and saying, why is there such – why do women leave and why do men at the end of their careers are they depressed and alcoholic? Because it's unsustainable. It's not a good life. If we really want to change that, that's what we have to change, but you're not going to be able to take home \$2 million a year. But really, you can't live on \$1 million or \$800,000 or like – you know? (Comment 91)

Interestingly, this comment about how much is earned echoes the discussion above of successfully integrating flexible work opportunities for a practice group.

Consistent with these comments about the tough, disheartening demands of working in large firms, it was apparent that for some the reality of making a success of flexible work on a day to day basis and at a particular career level could be challenging, and there are still concerns that working flexibly could be damaging to one's career prospects:

I know in my team there is a view that, while there's flexibility, it's not as flexible as it could be. So we've just actually been told unless you need to work at home for a particular reason, try and be in the office. So one of the partners is an innovation partner ... and he's trying to change that work view. Because at the end of the day, if you do your work, why does it matter if you're sitting in your office or somewhere else? (Comment 92)

This firm has very good part time policies and I have taken advantage of them, it does hinder your career progression. So, for example, I only have one child, who was born in 20xx, but for about seven years I worked part time and that was initially three days and then four days and then four and a half days. The firm was fantastic around that in terms of allowing me to do that and it worked fine, but it just meant that I haven't – I think it has – it's one of the things that's got in the way of my progression. (Comment 97)

Commenting on the firm's use of flexible work practices, a managing partner noted the challenges experienced by some of their partners when the theory and practice of flexible work present themselves, suggesting that

the biggest issue tends to emerge around people, when it has an impact on them personally, so partners – when staff may have family commitments or wish to start families, that tends to test it, because suddenly it's like, oh, the concept's great, but now the practice ... (Comment 94)

Perhaps in response to this gap between theory and practice, another managing partner noted that the firm was providing workshops to educate supervising partners in the benefits of flexible working arrangements:

We're engaging someone do some research for us, so have workshops with partners supervising people who are partaking in the flexible work arrangements. Really finding out what the benefits are, the weaknesses, where they see difficulties and challenges – ... hopefully trying to get some objective data again to then look at – okay,

what do we need to do? Where do people need assistance? How do we need to change our policies? (Comment 95)

There is a need for firms to consciously build in strategies that ensure that women who have taken time out to have children and return to flexibly work, are reintegrated in a way that minimises damage to their careers (Comment 98). For example, it was suggested that keeping lawyers involved with clients while on parenting leave and placing them back into client work on their return could be helpful strategies (Comment 99).

And, even among women who had positive experiences taking parental leave and working part time, the issue of presenteeism was still identified. One woman, who worked in what she identified as a very supportive team, was made partner and went on parental leave 18 months later, returned part time working flexibly, and was made an equity partner 12 months later. She felt the need to be present in the firm after parental leave to justify her productivity. Particular pressures for presenteeism were identified in areas where transactional work was undertaken and the resulting struggle to balance “being a mother and being a parent with work” (Comment 100).

These discussions suggest that rethinking working and living within a practice group, breaking down “silos”, and ensuring broader areas of expertise can be stimulating, rewarding, and even inspiring, and may result in attracting the best talent. It may also be in the best interests of the firm, in terms of the ability to retain the best people. Finally, these examples suggest that this type of approach can work in both regulatory and litigation areas, and that clients may be likely to be receptive rather than resistant to practice groups working effectively and flexibly.

Partnership

Managing partners were asked about the criteria their firm applies to partnership appointments. Senior Associates and lawyers were also asked about their knowledge of the criteria and the level of transparency of the criteria within their firm.

Generally speaking, partners identified revenue generation through billable hours and client attraction, technical ability, and client development and people management, culminating in the presentation of a sound business case, as key criteria for partnership (Comment 103). The relative weight given to each of these, however, was less clear. All of the managing partners interviewed contended that, while generating revenue, or “financials”, was crucial, this was not the only necessary factor. One stated that while there is a “minimum financial criteria that needs to be met” it is flexibly applied depending on the circumstances of the person; “[i]t will be one thing that needs to be at a certain level along with a bunch of other things”, adding

that “hopefully it means that people with different strengths are able to progress into the partnership” (Comment 104).

It was also emphasised that it is not “the best biller that always gets promoted” (Comment 105). It was indicated that ability to work with others, lead a team and manage a team, were also crucial. Similarly, it was commented that “... rather than [revenue] being valued more, it’s that you must have [at a minimum] ... a sound business case” (Comment 106).

Contributions to clients as well as the potential for firm growth were identified as central to establishing a sound business case. Here it was said that the business case was not only about revenue but also about “the impact on the firm and the capacity for the firm to grow” as a result of the appointment (Comments 107–109). The ability to grow the practice area was highlighted in the context of a discussion of all of the criteria by another of the managing partners:

Three areas of contribution [are necessary]: financial, which is both the revenue to the firm you’re responsible for but also what you may be anticipating bringing in. The second one is your *practice development capability and trajectory and profile*. The third is the way in which you interact with teams, foster teams ... So it is about – it is a holistic exercise. But I think it’d be fair to – I think people tend to think it’s all about the business. No, it’s not. It is critical to have an *underlying and sustainable practice that can grow financially*, but what is more important is how you can then grow the people around you and grow the firm more broadly. (Comment 110)

Despite managing partners’ assertions as to the balance and flexible approach taken to weighing criteria, particularly the quantitative criteria, Senior Associates and lawyers were more likely to consider that financial performance was the most important factor against which they would be judged (Comments 112–115; 116–117; 118–119; 120). For example, the lawyers variously commented that “the focus is definitely on billable hours and clients ...” (Comments 121–122), and that, while she wasn’t really sure of the criteria, she has “... always erred on [the side that] your fees are your main priority” (Comments 123–124). These comments suggest a possible disconnect between what managing partners and senior management portray as valuable and what is perceived as valued by lawyers within the firm.

Privileging billable hours or quantitative measures of success for partnership can impact on women’s progress to partnership. As one female participant commented,

... men have an obvious advantage in progressing in a law firm through the number of hours you do. If you have time out to have children ... then you don’t do that number of hours and I think that works against you progressing in the firm, progressing to partnership. (Comments 128–129)

The range of issues for many women with the prioritisation of billable hours have been discussed by us elsewhere (Seuffert *et al.*, 2018).

Partnership aspiration and women's experience of getting on the partnership track was also the subject of investigation. Participants were asked whether they were interested in becoming partners in their current firms or, if they were already a partner, about their experiences of their pathway to partnership. Some of those who were already partners spoke enthusiastically, particularly about the support they received within their practice groups, from both women and men. They also spoke enthusiastically about sponsorship, in the sense of ensuring that they received high quality work and as providing advocacy for partnership. In more than one case sponsorship, and advocacy, provided by the practice group leader (one woman and one man) was identified as instrumental in achieving partnership. For a more detailed coverage of the challenges experienced by women in getting onto a partnership track and the impact of family responsibilities on partnership pathways, see Mundy and Seuffert (2017).

Conclusion

This article has presented the findings from a unique qualitative pilot research project, undertaken as a partnership between academics, the Women Lawyers Association of New South Wales, and four national law firms in Australia. The firms that participated are highly ranked in the WLANSW DCP, and have all made significant strides in adopting many of the best practices for fostering gender diversity and inclusion in large firms. The managing partners of the firms all acknowledged that there is more to do, and the women who participated identified many positive aspects of the ways in which their firms are approaching gender diversity, as well as ongoing issues. The positives and negatives identified are not new, but this level of depth of experience, particularly in relation to the positive aspects, has not previously been gathered.

National and international research highlights the intractability of barriers to advancement for women and the limitations of the glacially slow improvements to the statistics on women in leadership positions, pointing beyond recommendations about diversity programs and flexible work practices to the need for fundamental structural changes and systemic monitoring, including rethinking the criteria for success and the dominant partnership model. This pilot project will feed into the development of a larger project, which we have discussed elsewhere, that will investigate the competencies necessary for successful law firm practice in the twenty-first century alongside strategies for reshaping law firm culture and partnership models, with the goals of achieving diversity consistent with the business case for diversity as well as with equality and justice goals (Seuffert *et al.*, 2018). Proposing a project focusing on diversity and competencies and reshaping partnership models also responds to calls for research done in collaboration between academics, professional bodies and law firms. Indeed, some Australian law firms have been calling for assistance on more fundamental changes in response to the challenges of diversity and inclusion, and have

expressed their commitment and openness to improving. A larger collaborative project linking diversity and inclusion imperatives with reshaping law firm culture and partnership models would have the potential to be world-leading.

Notes

1. This research was conducted in accordance with the University of Wollongong Human Research Ethics Committee (ref: 2016/214). At one of the firms, there was only one female equity partner not currently on parental leave so she could not be randomly chosen.
2. Interviews were conducted on a confidential basis at the four large law firms that participated in the project. As identification of ethnicity, class or status in the firm, or pseudonyms, might allow a participant's quotes to be linked together, interview comments are numbered sequentially without any further information to protect confidentiality.
3. These programs are available for men and women lawyers.

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