UNEQUAL PARTNERS?
Women solicitors’ experiences of workplace discrimination, flexibility and success in Queensland.

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KEY WORDS
legal profession, discrimination, sexual harassment, Kanter, stereotypes, role traps, workplace mobbing, ‘exclusionary indicators’, ‘exclusionary overload’, flexible work practices, billable hours, success in legal practice, self-confidence, women lawyers, Queensland lawyers, Australian lawyers, human resource management, lawyers as managers

ABSTRACT
This thesis explores issues of discrimination, flexibility, and success in the solicitors’ branch of the Queensland legal profession. It interrogates the discrimination and disadvantage practitioners report in their daily legal practice; whether they have access to achievable flexible workplace policies and practices; and whether they feel able to attain success, however that might be defined by individual lawyers.

Although there have been numerous studies on the circumstances of women lawyers in other jurisdictions, no work had been carried out in Queensland at the inception of this doctoral research. There is no subsequent Queensland work that explores the specific circumstances of solicitors within the three key areas of discrimination, workplace flexibility and success. This thesis addresses this gap.

The central research question in the thesis asks whether, and to what extent, prejudice and gender bias exist within the profession. Findings are analysed and set against the backdrop of extensive literature on women in the profession both within Australia and overseas. The research adopts a multi-method approach within an over-arching feminist framework. Qualitative and quantitative methods have been utilised, with the principal data being collected through a State-wide anonymous survey and a series of in-depth semi-structured interviews.

My findings establish that discriminatory and exclusionary practices continue within the Queensland profession, adversely affecting many practitioners and
disproportionately affecting female solicitors. They are practices that are often hostile to the achievement of meaningful work life balance, as well as to career promotion and progression. As a result of these practices many women feel disadvantaged, as do some men. They are practices that adversely affect the health and future of individual solicitors and the profession generally.

Female solicitors continue to be trapped, or ‘encapsulated’, within stereotypical roles and organisational attitudes. These attitudes continue to both overtly and subtly define woman as ‘other’ or deviant from an acceptable male norm in the legal workplace. Many legal workplaces also exhibit a range of workplace mobbing-style factors. The presence of a number of these discriminatory and exclusionary factors can lead to ‘exclusionary overload’ where women feel forced to leave their chosen profession. To a substantial extent, the lived experiences of women in the solicitors’ branch of the Queensland legal profession continue to replicate and re-present a long theoretical history of stereotypes, role traps, ‘otherness’ and ‘exclusionary factors’ that historically underpin the profession of law.

Some legal workplaces have acted to identify disadvantage and difficulty arising from traditional workplace practices in critical areas of formal and informal networking, work allocation, mentoring, training opportunities, marketing and client entertaining. Nevertheless, female, and male, solicitors continued to identify benefits flowing overwhelmingly to male colleagues as a direct result of these continuing practices.

This thesis argues that efforts to introduce flexible work practices, or alternatives to traditional success pathways, will be meaningless if underlying, entrenched, discriminatory attitudes and practices are not acknowledged, understood, and addressed.

An interdisciplinary research process, that includes male practitioners and makes extensive use of human resource management discourses, means the thesis contributes to a multi-dimensional appreciation of legal lives on a number of theoretical and
practical levels. Based on the research data and analysis, the thesis makes original contributions through the development of a number of awareness-raising and diagnostic tools to enhance an understanding of Queensland solicitors’ lives, and to assist in monitoring existing or newly introduced workplace policies and practices. Significantly, these tools include an extended typology of role stereotypes, a checklist of exclusionary indicators, a success framework, a model for workplace policy implementation and monitoring, and a representation of the cycle of cultural barriers operating against women.

These tools are designed to enhance our understanding of practitioners’ daily working lives, as well as what they seek to achieve both professionally and privately. This in turn allows the profession to better understand what workplace cultures, policies and practices are most likely to give effect to those aspirations.

The thesis considers appropriate responses and ways in which the professional peak body, the Queensland Law Society, might engage with the issues raised by research participants. It suggests ways the Society can work with the profession to create a climate for change, and perhaps most importantly to provide a safe space where solicitors can participate in the critical conversations that will be needed in the years ahead. Finally, the thesis suggests future research directions.
STATEMENT OF ORIGINALITY

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Geraldine Mary Neal ..............................................................

ETHICAL CLEARANCE

This doctoral research was conducted in accordance with the protocol approved by the Griffith University Human Research Ethics Committee (ref: HREC LAW/02/01).

(refer: thesis Chapter 2, Section 2.3 Ethical Considerations, at p 2-6 n 23)
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Sun, moon and stars – soul mate, best friend, and greatest supporter – who believed.
WORK PUBLISHED IN THE COURSE OF THE RESEARCH

* The following have been published in peer-reviewed publications or at peer-reviewed conferences –

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Neal, Geraldine, ‘“Madonnas”, “seductresses”, “pets” and “iron maidens”: are lawyers managing badly?’ (2007) 7 (Other Contact Zones) New Talents 21C 57.

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Neal, Geraldine, ‘Women in the Queensland Legal Profession’ (Paper presented at World Congress of Sociology, Brisbane, 2002).
Neal, Geraldine, ‘Managing Conflict at Work: The Cautionary Tale of the Chief Magistrate – the Culture, the Communication, the Conflict, and the Cast of Extras’ (Paper presented at Australian Human Resources Institute Queensland AHRI Week, Rockhampton, 2004).
STYLE NOTE

The footnote and bibliography style adopted in this thesis is in accordance with the Melbourne University Law Review Association Inc *Australian Guide to Legal Citation* (2nd ed, 2002).

In a commitment to research that can be useful or make a difference, I have extracted from the thesis bibliography all reference materials related to law and the legal profession. This material is collated separately as Appendix 17 and is available to women lawyer and/or legal profession equity groups to initiate or expand their own reference lists. (refer: thesis Chapter 2, Section 2.4.5 Literature Review, at p 2-21).

Direct quotations from research participants (including single words) appear in italic script throughout the thesis (emphasis in the original quote is shown by underlining). My rationale for highlighting participants’ words in this way is detailed in the thesis. (refer: thesis Chapter 1, Section 1.1 Introduction, at p1-1 n 2; and Chapter 2, Section 2.2 Methodological Framework, at p 2-4).

I adopt the following system for referencing direct quotes from research participants:

(i) interview participants are denoted by ‘I’ for interviewee, ‘(f)’ or ‘(m)’ for sex of interviewee, a code number assigned to the interview transcript to preserve anonymity of interviewee, and finally the page number/s from the interview transcript (e.g. I(f)70: 16 represents an interview with a woman solicitor assigned code number 70, with the direct quote coming from page 16 of the typed transcript of interview);

(ii) survey participants are shown as ‘F’ or ‘M’ for sex of survey respondent, a code number allocated to returned survey instrument, ‘(S)’ to indicate it is a quote from comments written on a survey instrument, and ‘at Q …’ to specify at which particular survey question (if applicable) the comment was made (e.g. F101(S) at Q 10 How do you feel you are treated in your workplace? represents a woman allocated code 101, who has written a comment at Q10 on her returned survey).

As a writer with some vision impairment, I have followed the Commonwealth of Australia *Style manual for authors, editors and printers* (6th ed, 2002) and the American Psychological Association *Publication Manual* (5th ed, 2001) and have not justified the right hand margin of the thesis. Also, based on experience obtained at the Anti-Discrimination Commission Queensland, and in line with a number of authorities (including Australian Vice-Chancellors’ Committee *Guidelines for Information Access for Students with Print Disabilities* (2004) and Vision Australia *Readability Guidelines* (2007)), I have where practicable utilised white space together with discrete chapter sections, and some highlighting and underlining of text to make the written page as accessible as possible to a reader.
THE CATALYST – AN AUTOBIOGRAPHICAL NOTE

‘A long habit of not thinking a thing wrong gives it the superficial appearance of being right’.  
>Thomas Paine¹

My own experiences as a private legal practitioner over some 20 years were a curious and exhausting mix of prejudice and praise, of overt hostility and professional camaraderie, of extreme despair and extraordinary satisfaction – experiences which led me to a deep personal examination of beliefs about work, professional satisfaction, and the concept of success.

Time: 1969 – I am a first year Arts-Law student excitedly attending my first law lecture. The large lecture room is packed. The lecturer asks all students doing combined degrees to stand. Surprised, I stand with a small handful of other students. We are publicly harangued for our lack of serious commitment to law. The lecturer then gestures to the small number of male students to sit. I and a few other female students remain on public view. We are told we are wasting time, as clearly we are not serious about doing law. The lecturer is scathing. We will never finish. We will go off and get married, have children. We are not to bother him if we have queries or fall behind because of any academic, or other, dalliance elsewhere. We are ignored for the rest of the year. Unless of course, there is some legal case with salacious sexual detail, when we can be sure we will be called on to answer questions before the class.

I learnt to keep my head down and not draw attention to myself. I worked hard to complete my other degree. The few women students shared law lecture notes and information. After just one year I needed to move to part time enrolment. I never sought help from lecturers. I knew that my enrolment details and my femaleness shouted my lack of commitment, my lack of ability, my difference.

¹ Cited in Kanter, Rosabeth Moss, Men and Women of the Corporation (1977) 265.
I endured, with my female colleagues, the snide remarks from male lecturing staff, the sport of the day when some woman was made the butt of a joke (nearly always with sexual innuendo). Students shared information about which lecture group to select in core legal subjects. The few women, and some supportive male students, warned each other off those (male) lecturers known to seek more from female students than a well researched and timely assignment.

**Time: November 2000** - Quentin Bryce, then Governor of Queensland, delivers a speech to open a ‘Women in the Law in Queensland’ exhibition at the Supreme Court in Brisbane. It is an occasion to reflect on the 95 year history of women in law, and her own 40 year history in the law. She recounts her own experience as a woman on staff at the University of Queensland Law School. She was appointed as a lowly tutor in 1968, and on at least one occasion was introduced to a visiting academic as ‘one of our ladies who comes in to help’.

I remember. I attended her tutorial group in 1969.²

**Time: late 1970s** – I am an articled law clerk in regional Queensland, having returned to legal study after a considerable break (although not to ‘go off and have children’). I regularly attend the monthly callovers of matters in the Supreme, District and Magistrates Courts. There are perhaps three or four women among some 15 or so practitioners on these occasions. The judicial officer of the day starts proceedings, ‘Gentlemen’.

**Time: 1982** - I am a solicitor in private practice. I appear before the local Magistrate and announce my appearance. He asks whether I am a ‘Mrs’ or a ‘Miss’. I reply politely that I use the title ‘Ms’. ‘Not in my courtroom you don’t’, he replies in a hearty voice. ‘That’s a wedding ring you’re wearing isn’t it?’ This same Magistrate seeks me out at a Christmas function and asks why I haven’t started a family – perhaps there is some medical problem?

² See: Bryce, Quentin, ‘Reflections – 40 Years On’ (Speech delivered at the ‘Women in the Law in Queensland’ Exhibition, Supreme Court Brisbane, 24 November 2000), 4. Governor Bryce recalled that women comprised 7 percent of the student enrolment in the Law School in 1968.
Some years later, the same club faced financial ruin. The then president contacted a number of local professional women to advise us the constitution had been amended to admit women as members and he extended a personal invitation to us to join. I declined. I said I thought it was clear that we were only welcome to join when the club needed our money. The president said he found my ‘attitude’ offensive.

These incidents were always quite shocking – unexpected – and somehow unanswerable. The key defence against these attacks was dignity, and a constant striving to work harder.

**Time: mid 1980s** – I attend a Continuing Legal Education seminar program and decide to go to the welcoming drinks. I am chatting with a group that includes some then members of the Queensland Law Society Council. In the middle of a rather interesting conversation among the group, one of the Councillors says loudly, ‘It must feel odd to be the only lady here’. Startled I look around the room and don’t see other women close by (although some have attended various seminar sessions throughout the day). I answer carefully, ‘I didn’t really notice. I’m just here as a solicitor like everyone else’. ‘Hardly that’ he scoffed.

**Time: mid 1980s** – I serve on a Family Court Judges’ Committee as the solicitor representative for my regional area. I am asked by my local professional Association to escort a visiting circuit Judge to drinks arranged by the Association. I collect the Judge and drive him to the venue. I then wait on the footpath until a (junior) male colleague arrives to sign me in to the men-only club selected as the Association’s venue of choice.

Some years later, the same club faced financial ruin. The then president contacted a number of local professional women to advise us the constitution had been amended to admit women as members and he extended a personal invitation to us to join. I declined. I said I thought it was clear that we were only welcome to join when the club needed our money. The president said he found my ‘attitude’ offensive.

**Time: late 1980s** - I phone a very senior male practitioner. He regularly refers to me as ‘dear’ when discussing a mutual client matter. He is not available so I ask whether I may leave details with his (mature age and experienced) secretary. She launches into an outburst about women solicitors – how we are taking the places of men – how we shouldn’t be allowed to do law.

These incidents were always quite shocking – unexpected – and somehow unanswerable. The key defence against these attacks was dignity, and a constant striving to work harder,
be better, achieve more. In short, to ensure there could be no valid criticism of my legal work – from clients or colleagues.

**Time: 1990s** – I am involved in a complex property matter on behalf of a client. The junior male solicitor on the other side is difficult to deal with as he does not have sufficient experience in the field. His response to this is to bluster a great deal. Negotiations have been tedious. He telephones me to ask whether my client will accept an offer they have put to us. I advise him I have been instructed to refuse the offer and begin to set out my client’s reasons and concerns. He interrupts, shouting abuse down the phone. One outburst stays with me, ‘You women think you know it all – why don’t you just go back where you came from?’

I was startled and upset by the extreme rudeness I had encountered. But there was also something more – a feeling of embarrassment, perhaps even shame? I had failed to keep my head down. I had been noticed. I discussed it with my business partner. He was supportive. However, I opted to do nothing. I remained the outsider, hoping to stay inside the gate.

**Time: 2006** – I am approached by a highly competent and well thought of solicitor. She is quite senior in her field. She wants some advice. She has been shouted at and abused by a male colleague in a telephone conversation. She has decided not to allow this to pass and wants to discuss possible formal responses.

I was shocked by her story. She named the perpetrator. It was the same practitioner who had verbally abused me nearly 10 years before. I wondered how many other women had suffered his petty and pathetic despotism; and whether I could have stopped his behaviour back then. I apologized to her for not acting myself. I praised her carefully thought out response and offered my support. She received a written apology.
Despite these incidents, and indeed others like them, there were times of extreme satisfaction, intellectual excitement and challenge, lifelong friendships forged with colleagues and clients – women and men. I achieved partnership and had the opportunity to play key roles within the profession. I was proud to be the first women in Queensland to be appointed president of a Community Corrections Board, and the first to chair a Patient Review Tribunal under the then Mental Health Act. I, and other female colleagues, dismissed occasions of confronting sexism as symptomatic of an outdated and dying breed of practitioner. Perhaps, we thought, it was also about outdated attitudes hanging on in regional areas. I welcomed the influx of women coming into law schools and moving into the profession. Although, I searched anxiously for signs they were making it through to the letterhead.

Despite these incidents, and indeed others like them, there were times of extreme satisfaction, intellectual excitement and challenge, lifelong friendships forged with colleagues and clients – women and men. I achieved partnership and had the opportunity to play key roles within the profession. I was proud to be the first women in Queensland to be appointed president of a Community Corrections Board, and the first to chair a Patient Review Tribunal under the then Mental Health Act. I, and other female colleagues, dismissed occasions of confronting sexism as symptomatic of an outdated and dying breed of practitioner. Perhaps, we thought, it was also about outdated attitudes hanging on in regional areas. I welcomed the influx of women coming into law schools and moving into the profession. Although, I searched anxiously for signs they were making it through to the letterhead.

The following remarks are examples of those made by women in the late 1990s as part of that pilot research³ –

³ Undertaken as part of a Masters of Arts through Deakin University, and with ethical approval from the Deakin University Human Research Ethics Committee.
They [the male lawyers] are friendly enough when it comes to off-loading some extra files, but they seem to forget my name when it comes to arranging a casual lunch or drinks after work.

I got pregnant, worked till eight months and then took (unpaid) maternity leave for nine months. After six months I approached the [male] managing partner about coming back three months early on a part-time basis. I was basically told if I wasn’t serious about the job, I’d better look elsewhere. I’d worked for the firm for nine years. They’re complaining about their ‘investment’ [my training, etc] being ‘thrown away’, but they’re the ones who threw it away.

One of the senior male solicitors is always making sexist jokes and sexist putdowns, but I’m expected to ‘enjoy the joke’.

I don’t think I could join [a local group of women lawyers] because the guys at work would think I was ‘getting at them’. It just isn’t worth the hassle.

If I had any preconceived notions that difficulties for women were confined to particular levels or particular areas of the profession, those were dispelled when High Court Justice Mary Gaudron told the September 1997 launch of Australian Women Lawyers that her brother justices on the High Court tried to dissuade her from speaking at a gathering of women lawyers in Perth (in 1989) on the grounds that it was ‘inappropriate’, that there was no need for such organisations, that there was ‘no discrimination’ in the legal profession, and that it would actually be ‘discriminatory’ for Justice Gaudron to attend such a gathering.⁴

By its very nature (which is competitive and adversarial), the legal profession is one that consists of many isolated individuals. When my retirement from active practice placed me in ‘neutral’ territory, I was concerned to hear so many stories of prejudice, hostility and difficulty. The fact that women so willingly shared stories of exclusion and marginalisation was a powerful catalyst for the design of doctoral research that might allow these voices to be heard.

⁴ Gaudron, Justice Mary, (Speech to Launch Australian Women Lawyers, Melbourne, 19 September, 1997), 16-17.
It became important to me to try to understand what it was really like for Queensland women who work as solicitors – an understanding beyond the visible level of particular workplace practices, and extending to feelings and ideas about their chosen profession and whether their achievements and success came at a price that their male colleagues did not have to pay.

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**Time: 2005** – I am in Brisbane and decide to visit the Supreme Court complex to view the exhibition celebrating 100 years of women in the law in Queensland. I enter the foyer and look around for some sign indicating the location of the exhibition. I notice uniformed security personnel answering queries. I approach one (male) who greets the male lawyer (suit and holding bundle of files) just ahead of me. The guard speaks respectfully to the male lawyer and I hear him use the word ‘Sir’. I move forward and smile. Before I can frame my question, the guard asks, ‘What do you want sweetheart?’ I say quietly and pleasantly, “My name isn’t “sweetheart”’. Before I can add anything, the guard sneers and says in a mocking tone, ‘How can I help you then?’ He is clearly angry and answers my polite request for directions to the exhibition in a rude and dismissive way. It is an ironic start to my journey through Queensland’s 100 years of women in law.

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**Time: 2005** - I spend a fascinating half hour at the exhibition. I decide to sit quietly for a while. I am close to the lifts and courtroom doors. Two suited and brief-cased male lawyers emerge from one of the courtrooms, talking loudly and confidently as they moved towards the lifts. They tower over a third person – a slightly built and smartly dressed young woman carrying bundles of files. As they pass the end of the exhibition area, one of the men turns to the woman, laughs, and says loudly, ‘What’s all this women in the law stuff about then?’ Both he and his male companion laugh boominly. No reply comes from the woman. She looks towards me, embarrassed. She smiles politely at the men. The trio move on into the lift. Some ten minutes later, a large ruddy-faced young man sweeps out of a courtroom. His barrister’s robes swirl behind him, and his new looking wig is firmly planted on his head. His hands (empty) swing by his sides as he strides silently towards the lifts. Some distance behind, a female lawyer follows. She is pushing a large trolley carrying books, files and papers. She smiles at me as she passes. The men neither notice nor acknowledge me.

The two women I observed in the Court complex seemed apart from the law’s inner circle. They were the handmaidens of the benchmark men. One hundred years of women in the law had not delivered these women an equal speaking role in the litigation post mortem and debrief. These women were apart, were ‘other’. Theirs was to fetch and carry

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and support the men in their central and important role. Nor could, or should, they celebrate the role of their sisters-in-law in the exhibition. That was a matter unremarked or humourous to some at least of the men who would pass by. I remembered a weary comment written by one senior woman solicitor during my pilot research project that this is the way of the world.\(^6\)

In June 2006, I interviewed a woman practitioner who expressed her frustration with a perceived lack of change, and ongoing entrenched attitudes, at many levels within the profession. She said attitudes that resulted in women receiving less respect and cooperation, less value and support, than their male colleagues were alive and well. She described a complex multi party litigation matter (initiated by her clients) and a resultant mediation process involving a number of (male) lawyers and experts –

\textit{At the end of the mediation there was lots of hand shaking and back-slapping going on. And in fact five of them went out for a drink. No one shook my hand, or slapped my back, or asked me to go for a drink. ... You’re so used to getting overlooked. Now I actually know these people ... and it’s like they can’t see you ... it’s ingrained and entrenched.}

[woman – mid 40s – employed solicitor - regional city] (emphases hers)\(^7\)

In the 1980s, many women and men within the legal profession said the situation for women would improve with the numbers of women coming through the pipeline. Sadly, the pipeline is a leaky one as very few of those hopeful new graduates seemed to make their way through to senior positions. Women and men continue to tell stories of prejudice, discrimination, rigid and outdated management practices, and lack of meaningful career paths.

I have sought to give those women and men a voice. My own experiences may have forged philosophical commitments, raised questions, and encouraged explorations through a variety of disciplines, but it is the key voices of the women and men who participated in my research that have finally guided my research and its conclusions.

\(^6\) See n 3 above. This is reminiscent of Margaret Thornton’s ‘tilted legal universe’ – see: Thornton, above n 5, 6. 
\(^7\) I(f)53: 5-6, 7.
# CHAPTER 1. BREAKING RANKS

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‘... both upholding and disrupting the gender lines can be fraught ... it is a case of “damned if you do and damned if you don’t”’
> Margaret Thornton

_I think overall [the profession is] much better than [it was], but there [are] still problems ... I hope your research can get some answers because I don’t know how you tackle them. I think it’s just part of this ... entrenched [culture]. It really is a little boys’ club._
> woman – age 50s – senior Queensland solicitor

1.1 INTRODUCTION

This thesis examines the lived experiences of solicitors in Queensland. It asks whether prejudice and bias exist in the profession, and whether women are more likely than their male colleagues to experience discrimination and disadvantage in their daily practice of the law. Where discrimination does exist, the thesis interrogates whether, and in what ways, such discrimination makes it more difficult for women to advocate for, and secure, family friendly and flexible work practices, and to achieve success in their chosen field. My research examines barriers to women’s participation that silence their voices, and dismiss them as equal players with men.

The thesis is based on exploratory and multidisciplinary research. Specifically, it considers daily work and life issues focussed within three broad areas. The first of these is workplace exclusion and discrimination experienced by solicitors, especially

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2 I(f)70: 16 (interview conducted 2005).

Note: I adopt the following system in this thesis for referencing direct quotes from research participants: (i) interview participants are denoted by ‘I’ for interviewee, ‘(f)’ or ‘(m)’ for sex of interviewee, a code number assigned to the interview transcript to preserve anonymity of interviewee, and finally the page number/s from the interview transcript (e.g. I(f)70: 16 represents an interview with a woman solicitor assigned code number 70, with the direct quote coming from page 16 of the typed transcript of interview); (ii) survey participants are shown as ‘F’ or ‘M’ for sex of survey respondent, a code number allocated to returned survey instrument, ‘(S)’ to indicate it is a quote from a comment/s written on a survey instrument, and ‘at Q …’ to specify at which particular survey question (if applicable) the comment was made (e.g. F101(S) at Q 10 How do you feel you are treated in your workplace? represents a woman allocated code number 101, who has written a comment at Q10 on her returned survey document). See: Chapter 2, Sub-Sections 2.4.1. Survey and 2.4.4 Semi-Structured Interviews, pp 2-10 and 2-15.

Note: As I explain more fully in the discussion on methodology, I use italic script for all quotations from research participants within the body of the thesis - see: Chapter 2, Section 2.2 Methodological Framework, page 2-2, at 2-4.
gender based discrimination and including aspects of sexual harassment and workplace bullying and mobbing. The second is the struggle of individual practitioners and their legal workplaces to achieve meaningfully flexible and healthy work practices for all practitioners regardless of circumstances, and including family friendly opportunities. The third is how solicitors understand the notions of achievement, advancement and success.

I focussed on these three areas because they closely align with my own experiences of private practice, and those of many practitioners I had the privilege of knowing and working with. They are also three areas that, I argue, are bedrock determinants of the health and future of private practice for Queensland solicitors in the coming decades.

This thesis investigates whether the experiences of women solicitors, in terms of prejudice or discrimination and their ability to negotiate daily pressures of practice, are similar to those of other lawyers, including their male peers within Queensland, and practitioners both in Australia and overseas. A comparison of the responses, ideas and views of men as well as women demonstrates that many women inside the Queensland legal professional culture continue to experience more difficulties and face more barriers than do their male counterparts. In considering some of the reasons why Queensland women’s experiences of legal practice continue to be more problematic than those of their brothers-in-law, I explore some theoretical underpinnings for those differences and difficulties.

This initial Chapter of the thesis formally introduces the research project. It specifically addresses why it is important to maintain a gender narrative in an examination of workplaces where women may continue to be viewed as different from, or ‘other’ than, the (male) norm. It considers the significance of the work, particularly within a Queensland context. It details the project’s purposes and its aim to capture as multi-dimensional a view of Queensland solicitors as possible. It outlines the research questions, and it defines the boundaries and limitations operating on the project.

In the next Section, I highlight some findings from the literature about women in law by way of preliminary context for my contention that many women solicitors continue
to face problems in the pursuit of their chosen careers, and continue to be seen as outside the professional norm.

1.2 BACKDROP TO THE RESEARCH

In December 2004, the Chief Justice of the Supreme Court of Queensland, Justice Paul de Jersey, publicly expressed concern about ‘the number of law graduates who were leaving the profession’. He referred to ‘the increasing flow of younger lawyers out of the profession’ and said, ‘[p]resumably, long working hours, the business orientation, attitudes of cynicism and aggression and the like contribute to this’.

Other commentators and stakeholders have posed complementary questions: asking why so many women graduate from law school and enter private practice, but disappear long before they reach partnership in solicitors’ firms (or seniority among barristers); and why long hours, a driven focus on the financial bottom line, and cynical and aggressive styles of managing and working have become widespread. Some legal practitioners continue to express the view, ‘if you can’t stand the heat, get out of the kitchen’. But two key questions were first raised 20 years ago, ‘...what is wrong with the kitchen that so many bright, competent people find it difficult to work there?’ and ‘what happens if people work all day in a kitchen that is too hot?’

Solicitors are positioned within multiple contexts. These include not only their individual legal workplaces, but also the broader Queensland and Australian profession, and the strong masculine tradition of legal history and practice shared with other common law jurisdictions throughout the world. Solicitors operate, consciously or not, within the historical, social and political contexts that have shaped today’s

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3 Reported in: Oberhardt, Mark, ‘Top judge worried by legal exodus’, The Courier-Mail (Brisbane), 9 December 2004, 10. The Chief Justice was speaking at the annual breakfast hosted by the Queensland Law Society.
4 Ibid. This phenomenon was also identified in a survey of junior lawyers undertaken by Australian Young Lawyers and the recruitment firm Hudson, where 45.8% of those surveyed reported they were considering going to another employer. Reported in: Merritt, Chris, ‘No satisfaction’, Australian Financial Review (Melbourne), 14 May 2004, 60.
5 Above n 3.
society and its institutions, including the role of women within those institutions.

It is more than a century since the passage of the *Commonwealth Franchise Act 1902*, making Australia was the first nation to grant its (non-indigenous) women citizens the right to vote and to stand for election to a national parliament. One hundred years later, one commentator lamented that ‘true equality’ still eludes women.\(^7\)

Initially, women were not ‘persons’, and certainly not persons of the ‘fit and proper’ kind, for the purpose of admission to the legal profession.\(^8\) It was early in the 20\(^{th}\) century in Queensland before this particular hurdle was overcome with the passage of the *Queensland Practitioners Act 1905*. It was 1915 before Agnes McWhinney became the first woman to be admitted as a solicitor in Queensland. Nearly a quarter of a century then passed before the first woman, Una Prentice, graduated with a Bachelor of Laws degree from the University of Queensland Law Faculty. It was a further 30 years, in 1968, before the first woman, Quentin Bryce, joined that University’s full time law faculty as a tutor.\(^9\) While the Queensland Law Society has existed in its present form since 1928, it was not until after 1980 that women were elected to the Law Society Council, the Society’s governing body.\(^10\)

At the turn of the century and the inception of my Queensland research, the snapshot from around the nation did not paint a positive picture for the legal profession’s women. In 2003 one legal academic concluded that the situation of Australian women reflected that in ‘many other countries’ where –

> Women are clustered in the lower ranks of the professional hierarchy, in lower status practice areas, ... [and] women lawyers earn lower incomes on average than their male counterparts.\(^11\)

The 2001 President of the Law Council of Australia commented that women in the

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\(^7\) Irving, Helen, ‘Build upon a flawed past’, *The Australian* (Sydney), 12 June 2002, 11.

\(^8\) See, for example: Thornton, above n 1, 56-63. See also: Mossman, Mary Jane, *The First Woman Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (2006).

\(^9\) Details from the Women in the Law in Queensland exhibition <http://www.courts.qld.gov.au/library/exhibition/women/timeline.htm> at 10 July 2003. (Quentin Bryce later served as Governor of Queensland and in 2008 became Australia’s first female Governor-General.)


legal profession ‘have a long way to go to achieve complete equality’.12

The lower status of Australian legal women was attributed, at least ‘in part’, to their average younger age in comparison to their male counterparts.13 However, a detailed 1995 study14 highlighted the fact that where women and men entered the legal profession at the same time, women ‘advance in the profession at a considerably slower rate’.15 The numerous barriers to the advancement of women were identified as including workplace sexual harassment, a lack of family-friendly working conditions, the exclusion of women from male networking systems, an entrenched culture of long working hours, and the continuing homosocial16 reproduction of lawyers within the various State professions.17

Margaret Thornton described women comprising approximately 50 percent of all law students as a ‘dramatic change’ in the composition of law schools.18 But, the fact that women are taking more places in Australian law schools, and more women than men now graduate, still does not translate into senior women lawyers in practice. Recent years have seen a steady increase in the number of women within the solicitors’ branch of the legal profession in Queensland.19 Where women constitute more than half of the state’s law graduates,20 they are still ‘missing in action’ in terms of the numbers who are practising as solicitors and the numbers who achieve seniority or

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12 Trimmer, Anne, ‘The State of the Profession’ (Address delivered at 23rd Australian Legal Convention, October 2001) 8.
13 Above n 11.
14 Keys Young (prepared for New South Wales Ministry for the Status and Advancement of Women), Gender Bias and the Law – Women working in the legal profession in NSW (1995).
15 See: Hunter, above n 11, 101.
16 In the 1970s, Rosabeth Moss Kanter used both terms ‘homosocial’ and ‘homosexual’ reproduction – described by her as a kinship system in which men reproduced themselves, and seen as providing an important form of reassurance (to the dominant organisational or cultural group) in times of uncertainty. See: Kanter, Rosabeth Moss, Men and Women of the Corporation (1977) esp. 48, 63.
17 Keys Young, above n 14.
18 Thornton, above n 1, 2 (not just in Australia, but ‘throughout the English-speaking world’).
20 For the period 2000-2004, women constituted 54.37% of all law graduates from Queensland university law schools (F=3069, M=2576). There were more women than men in four of the five law schools (Bond University was the exception). See: Purdon, Sue and Rahemtula, Aladin (eds), A Woman’s Place – 100 Years of Queensland Women Lawyers (2005) 769.
principal status within Queensland private legal practice.

There is a paradox in the legal profession in that it champions the individual client or cause, and yet actively discourages individualism within its own ranks.\textsuperscript{21} I argue this has fostered, and continues to foster, a legal world where those who conform are rewarded, and where those who are different can be sidelined. Women in such a world are different, are ‘other’. As Regina Graycar succinctly put it, ‘the problems [for women] are much more insidious than those of numerical representation’.\textsuperscript{22} Until we at least begin to explore the hidden layers beneath the professional facade we risk continuing ‘to produce women lawyers who are ... successful copies of their male counterparts’;\textsuperscript{23} or, worse, mere parodies of them.\textsuperscript{24} Efforts by women to ‘fit the mould’,\textsuperscript{25} means they may avoid the risk of being seen as ‘other’, but I suggest at a cost to their essential wellbeing and integrity.\textsuperscript{26}

This brief backdrop to my research squarely raises gender as an issue. In the next Section, I argue that a gender narrative is vital to this research, and is also necessary in further and future research about the Queensland legal profession.

\subsection*{1.3 MAINTAINING A GENDER NARRATIVE}

Jennifer Pierce argued that gender shapes the experiences of women in the legal profession at a structural level.\textsuperscript{27} Robin Ely and Debra Meyerson wrote of the challenge and the importance of maintaining a gender narrative within workplace

\begin{itemize}
  \item[22] Graycar, Regina, ‘Feminism Comes to Law: Better Late than Never’ (1986) 1 \textit{Australian Feminist Studies} 116.
  \item[23] Ibid.
  \item[27] The specific notion of women as ‘other’ is one that recurs throughout the thesis. It is discussed in Chapter 4, Section 4.2 Women as ‘Other’, p 4-3.
\end{itemize}

organisations generally. They pointed out that for more than a quarter of a century there have been attempts to make workplaces ‘fairer and more hospitable’ for women, but these efforts have met ‘with varying degrees of success and commitment’.28 Ely and Meyerson’s own experiences in research and change management led them to posit the need for a dual approach – using gender as ‘a critical lens to view [workplace] experiences and the system in which those experiences are embedded’.29

They suggest that after an initial dual commitment to address gender and business issues, it is easy for an organisation to lose sight of the gender implications of values, culture, work systems and the like, and to focus solely on the business implications.30 Although they do not dismiss ‘the value of interventions aimed at increasing women’s capacities, and opportunities to compete effectively with men’,31 they ‘suggest these by themselves do not constitute a solution to the “gender problem”’.32 They argue that interventions to date need to go further in that gender needs to be seen, and eliminated, as an axis of power within organisations. They predicate this approach on:

- the notion of gender as a complex social process enacted across a range of organizational phenomena, from formal policies and practices to informal patterns of everyday interaction, which appear to be gender neutral on their face, yet reflect and maintain a gendered order in which men and various forms of masculinity predominate.33

In identifying gendered sites of power within legal workplaces, the voices of both women and men committed to fair and equitable workplaces need to be heard. Where gendered work policies and practices continue, even unintentionally, stories of inequity within legal workplace settings need to be told. Narratives about solicitors’ work within legal workplaces that eschew gender ‘can be seen as both reflecting and

29 Ibid, 605 (underlining mine).
31 For example: training and development, equal opportunity policies, non-discriminatory policies and practices, family friendly commitments, acknowledging and rewarding women’s traditional skills.
32 Ely and Meyerson, above n 28, 590.
33 Ibid.
contributing to [a] dominant cultural view that gender is irrelevant’.34 I have also attempted to remove the simplistic conflation of the ‘gender problem’ and the ‘woman problem’ and to en-gender a more complex and multi-layered appreciation of the processes by which organisations are, in fact, gendered.35

My research is positioned within an historical, and ongoing, context of women reporting inequities in legal workplaces and in society generally. This is a context where women are regularly marked out as different from the male norm, and where many genuine efforts to make a range of workplace benefits more accessible to women fail to achieve desired goals. I maintain the gender problem is not simply a woman’s problem, nor is it irrelevant to the operation of the modern workplace. The gender narrative in my research acts as a touchstone for both the career achievements my solicitor research participants described, as well as for the difficulties they reported.

In the next Section, I turn to the potential significance of the research and, in particular why I focussed on Queensland in undertaking this project.

1.4 SIGNIFICANCE WITH A QUEENSLAND FOCUS

There is a considerable body of research about the experiences of women in the legal profession, both in Australia and overseas. But, at the commencement of my research, there was no specific work in Queensland that studied the experiences of solicitors generally, or women in particular.36

34 Ibid, 604.
36 Hearn and Parkin posited “the significance of the lack of research [as] one focus of the research itself” – see: Hearn, Jeff and Parkin, Wendy, “Sex” at “Work” – The Power and Paradox of Organisation Sexuality (rev ed 1995) 45 (emphasis in original). A study of lawyers formed part of the 2006 Happiness in the Professions Study, which found that Queensland lawyers were the ‘happiest’ lawyers. However, the study also found that lawyers generally were ‘unhappier in their work than any other professionals, other than patent attorneys’ – see: Lamb, Ainslie and Littrich, John, Lawyers in Australia (2007) 75.
The leaders of the profession can dismiss reports from other jurisdictions as lacking relevance to Queensland circumstances. I expected there would be many similarities between solicitors’ experiences in Queensland and in other jurisdictions, both within and outside Australia. But it seemed reasonable to suppose that the Queensland Law Society would be more likely to be moved by the voices of its own members. The Queensland experience could not simply be assumed to mirror other jurisdictions.37

While considerable work had already been done or was ongoing involving women lawyers in other jurisdictions, both within Australia and overseas,38 any examination or debate around the experiences of Queensland lawyers, women or men, was muted.39

Findings in other jurisdictions, together with rich anecdotal evidence I had gathered in a pilot study,40 suggested that research with a focus on the three key areas of discrimination, workplace flexibility, and success could demonstrate that Queensland women solicitors: face definite prejudice and disadvantage; experience ‘success’ differently from their male colleagues; and are unable to access flexible workplace

37 Dominique Tubier, reviewing Margaret Thornton’s powerful treatise on Australian women lawyers, said the fact that ‘the initial premises ... have been raised in many other writings’ was a ‘possible criticism’, but that the value of Thornton’s work lay in drawing together the complex connections ‘which constrain the position of women within the profession’. Tubier, Dominique, ‘Dissonance and Distrust: Women in the Legal Profession – Review’ (1997) 19 (2) Sydney Law Review 267, 271, 270.

38 In the 1990s/early 2000s the following studies were typical: Law Society of Western Australia and Women Lawyers of Western Australia, Report on the Retention of Legal Practitioners - Final Report (March 1999); Hunter, Rosemary and McKelvie, Helen, Equality for Women at the Victorian Bar - A Report to the Victorian Bar Council (1998); (For other Victorian reports from this period see: below n 49); Keys Young (Prepared for New South Wales Ministry for the Status and Advancement of Women) Research on Gender Bias and Women Working in the Legal System – Report (1995); Thornton, Margaret, above n 1; Brockman, above n 25; Sommerlad, Hilary and Sanderson, Peter, Gender, Choice and Commitment - Women solicitors in England and Wales and the struggle for equal status (1998); Rhode, Deborah (Prepared for the American Bar Association Commission on Women in the Profession), The Unfinished Agenda: Women and the Legal Profession <www.abanet.org> at 2001; Tucker, Marilyn and Niedzielko, Georgia A (Prepared for the American Bar Association Commission on Women in the Profession), Options and Obstacles – A Survey of the Studies of Careers of Women Lawyers (July 1994) <www.abanet.org>.

39 During the life of this research, there has been one key exception. See: Hutchinson, Terry and Skousgaard, Heather, ‘Inside the Queensland legal workplace’ (2007) 27 (7) Proctor 30. (Based on a Queensland Law Society Equalising Opportunities in the Law Committee survey in 2003 and a subsequent analysis and report of the findings completed in late 2006 – see: Hutchinson, Terry (with Skousgaard, Heather, Kay, Erin and Ridall, Garth), Queensland Law Society Equalising Opportunities in the Law Committee 2003 Membership Survey: The Report (December 2006).) Also, changes in the regulation of the profession have led to the establishment of the independent Queensland Legal Services Commission which numbers among its roles to ‘facilitate, broker, undertake and partner the professional bodies, law schools and others in practical research calculated to improve standards of conduct in the profession’ (<www.lsc.qld.gov.au/20.htm> at 10 May 2008). See also: below n 43.

40 As part of a Masters degree at Deakin University in 1997.
practices in line with contemporary standards of workplace equity.\textsuperscript{41} This research identifies particular barriers faced by women within the solicitors’ branch of the Queensland legal profession.

The Queensland profession, with its split profession\textsuperscript{42} and highly decentralised justice delivery system, structurally presents some distinctive features in comparison with other Australian states. At the close of the 20\textsuperscript{th} century, the Queensland profession was coming under increasing, and unprecedented, public scrutiny and comment. During the life of this research, the Queensland profession has been subject to two inquiries, and the imposition of an entirely new regulatory regime, which has removed its long held rights to a large measure of self-regulation and professional control of its members.\textsuperscript{43}

As at 2004 just over one-third of Queensland solicitors were women.\textsuperscript{44} At that time, women comprised closer to 40 percent of the legal professions in both New South Wales and Victoria. Reports from New South Wales confidently predicted 50.2 percent of the profession in that State would be women by 2015.\textsuperscript{45} This research looks at the position of Queensland women in terms of both membership and governance roles in their profession. At the inception of my research very few women in Queensland had been elected to the governing Council of the Law Society, and only

\begin{itemize}
\item \textsuperscript{41} These practical purposes (the ability to accomplish something), as well as the significance of the research project, needed to be grounded in the research purposes (the ability to understand something). See: Section 1.5 Aims and Purposes, p 1-15; and: Maxwell, Joseph A, Qualitative Research Design - An Interactive Approach (1996) 16.
\item \textsuperscript{42} See: Section 1.7 Defining the Boundaries, p 1-21 for explanation of ‘split’ and ‘fused’ profession.
\item \textsuperscript{43} For some background to the change in the Society’s powers, see: Muil, Ian, ‘Judge Shanahan chairs a turbo-charged Professional Standards Committee; (2002) 22 (9) Queensland Law Society Proctor 14.The culmination of change and inquiries was the passage of Queensland’s Legal Profession Act 2004 resulting in major changes in the regulation and running of the profession (continued under the Legal Profession Act 2007). These changes are outside the scope of this thesis, but see generally: Mortensen, Reid and Haller, Linda ‘Legal Profession Reform in Queensland’; Haller, Linda, ‘Imperfect Practice under the Legal Profession Act 2004 (Qld)’; Mortensen, Reid, ‘Becoming a lawyer: From Admission to Practice under the Legal Profession Act 2004 (Qld)’; de Jersey, Paul, ‘The Supreme Court and the Legal Profession Act 2004 (Qld)’ – all: (2004) 23 University of Queensland Law Journal 280; 411; 319; 289.
\item \textsuperscript{44} See above n 19.
\item \textsuperscript{45} New South Wales figures (38.6% mooted to rise to 50.2% in 10 years) reported in: Pelly, Michael, ‘Laying down the law: women to take lion’s share of legal profession jobs by 2015’, Sydney Morning Herald (Sydney), 16 December, 2004, 2; Victorian figures (38.2% as at 31 January, 2005) provided by staff at Victoria Law Institute on 1 February, 2005.
\end{itemize}
two had held the role of president of the Society.46 Were the lagging numbers of women in Queensland a particular manifestation of women’s ‘daily dilemma of compromise’47 within their chosen profession?

Taken together, the factors I have mentioned resonated with Mary Jane Mossman’s notion of ‘this moment in history’.48 This is an opportune time in Queensland to take stock of the profession and the place of women and men within it. Gender is an ongoing issue for the private profession as the numbers of women in its ranks, and coming through law schools, continue to increase. It is more than a decade since the Victoria Law Foundation published its report on gender, job satisfaction, and effective work practices.49 Discrimination law and aspects of feminist critique are part of the curriculum in some law schools.50 Broader societal shifts call into question whether women can be lawyers, or other professionals, only if they conform to a male standard, or whether we need to challenge and re-conceptualise the way all lawyers work. There are changes in the ways legal services are delivered.51 Many law firms cross boundaries to create a national, or multinational, presence. The Queensland profession has seen great change, and embraces the concept of a national profession and national rules of professional conduct.52 This creates ‘an historic opportunity to

46 See: Purdon and Rahematula, above n 20, 782. Up to 2000, only seven women had ever been elected to Law Society Council, and only two (of those seven) had held the office of Society president.
47 Tubier, above n 37, 271. Women compromise not only between private and professional demands, but also between ways of being within the legal profession.
50 Feminist analysis is brought to bear in a range of mainstream law subjects. Typical Queensland examples include the study of critical legal feminism in Introduction to Legal Theory at Griffith University, or Theories of Law at Queensland University of Technology, or Advanced Jurisprudence at University of Queensland. A range of higher degree research projects examine and/or utilise aspects of feminist legal theory and the intersection of feminism and mainstream law. Academic journals such as Australian Feminist Law Journal and Alternative Law Journal attract writers of the highest calibre, while textbooks such as Graycar, Regina and Morgan, Jenny, The Hidden Gender of Law (2nd ed 2002) have moved into new editions.
51 Mossman, above, n 48, esp 149-156.
address the implications of [changes and developments] and to offer ideas which challenge, rather then reflect, existing sex role differences in our society’.53

This research project positions research findings within contemporary management discourses.54 This provides yet another aspect or ‘view’ of the Queensland legal profession’s ability to manage and respond to issues of workplace discrimination and difficulty, flexibility or lack of it, and the availability or otherwise of meaningful and rewarding career paths. Anecdotally, I was aware many solicitors felt inadequate as ‘managers’. This research highlights some management dilemmas, and, significantly, generates some practical and diagnostic management tools for use within legal workplaces.

Many legal practices, particularly in regional Queensland and in small suburban city firms, are facing a brave new world.55 They have morphed from relaxed family practices to focussed businesses positioned in a highly competitive world, where some traditional practice areas are under threat from other potential providers (e.g. accountants, conveyancers, banks and trustee companies). The 21st century solicitor needs to manage people and resources with an eye firmly fixed on the ‘bottom line’ if she or he is to survive and prosper. This places increased importance on the wealth of organisational and management discourses, particularly human resource management, to explicate these practical issues in the daily lives of lawyers.

My research does not look at purely quantitative data such as areas of practice and

53 Mossman, above n 48, 166.
54 Previous Australian research around women lawyers did not place any specific emphasis per se on best practice human resource management issues, particularly as they might connect to instances of workplace inequities. However, the profession (notably in Victoria and New South Wales) has responded to problems identified in their various research projects, recognising and promulgating some modern management solutions with the publication of practical policy guides as to flexible work practices, family friendly workplaces, and other workplace equity issues. This is in contrast to the absence of any such materials or guidelines (or even leadership through informed debate) in Queensland. Specific research and professional publications will be examined in detail later in the thesis. There are many synergies between legal professional and management discourses. But one example from American Deborah Rhode is instructive. She pointed out that one of the most common complaints from American lawyers is that ‘some powerful female partners have not “played a role in promoting the opportunities and quality of life” for junior colleagues’. She writes that ‘[s]tudies of corporate managers find similar reluctance by many female leaders to press gender issues openly’ – see: Rhode, Deborah, ‘The Difference “Difference” Makes’ in Ely, Robin J, Foldy, Erica Gabrielle and Scully, Maureen A (eds), Reader in Gender, Work, and Organization (2003) 159, 170.
55 I was aware of these changes from my own experiences of private practice, and from involvement in Law Society activities.
income. It asks solicitors how they feel about various aspects of their legal lives. It considers the perceptions of solicitors about the response and relevance of their peak professional body, the Queensland Law Society, to difficulties reported by practitioners. It contrasts those reported legal workplace experiences, and the profession’s responses to them, to ‘best practice’ in the corporate world, and to best practice efforts within other legal jurisdictions. My research also recognises linkages to a range of discursive practices embedded in individual legal workplace cultures and across and within the broader, public face of the profession. Informal traditions, behaviours and channels of communication can be as significant as more formal policies and procedures and practices.

This thesis draws on theoretical representations and understandings of women and their isolation from organisational/legal systems that have been built around a male myth of neutrality. It traces the conscious, and unconscious, development of Rosabeth Kanter’s celebrated insights into the role traps that ‘encapsulate’ women within organisations, extending these through an ongoing and current typology of professional women’s roles as an aid to understanding how women solicitors are perceived in their workplaces, and also how women respond to, and survive, workplace pressures.

This thesis also considers the ways that theories of workplace ‘mobbing’ can be

56 In the 1980s, a sociological researcher into Australian lawyers cautioned against the use of self-perceptions, finding them ‘misleading’. However, the thrust of his work was a strictly quantitative approach with a detailed examination of lawyers’ educational and family backgrounds, income levels, organisations and areas of speciality (similar to an annual Practice Survey sent out to members by the Queensland Law Society). While this work has a strong contextual relevance, it falls tantalisingly short of enquiry into how lawyers feel about their practice of the law and the conditions under which they practice it - legitimate enquiries where self-perception is the key. See: Tomasic, Roman, ‘Social Organisation Among Australian Lawyers’ (1983) 19 Australian & New Zealand Journal of Sociology 458.

57 See: Chapter 2, Section 2.4.6 Examination of Discursive Practices, p 2-22.

58 While also identifying a valuable range of individual female experiences. See: Tubier, above n 37. There is considerable theoretical foundation for a project that values and privileges individual experience, thus moving it from the private into the public sphere. See, for example: Bell, Diane and Klein, Renate (eds), Radically Speaking - Feminism Reclaimed (1996); Gatens, Moira and Mackinnon, Alison (eds), Gender and Institutions - Welfare, Work and Citizenship (1998); Thornton, Margaret (ed), Public and Private - Feminist Legal Debates (1995).


60 See generally: Westhues, Kenneth (ed), Workplace Mobbing in Academe (2004); Zapf, Dieter and Einarsen, Ståle, ‘Bullying in the Workplace: Recent trends in research and practice – an introduction’
brought to bear across a profession, rather than understood only within the confines of an individual workplace. I extrapolate workplace mobbing-style factors to an ‘exclusionary effect’ that is part of the workplace dynamics that shape women’s professional experiences and significantly inhibit their ability to advance and achieve. The thesis develops a list of Exclusionary Indicators as a diagnostic tool for legal workplaces.

The research interrogates the ways in which solicitors conduct their legal lives, but also questions traditional ways of ‘being’ lawyers, and challenges the profession to interrogate more deeply the client service ethic and to look at other ways of lawyering that might accommodate work and family, or other responsibilities, in a more healthy and balanced way. The thesis highlights the divide between the existence of flexible policies and practices and solicitors’ ability to access flexible options.

This, in turn, leads to an examination of solicitors’ understandings and articulations of the notion of success in private practice. The thesis synthesises the multiple views and ideas expressed by Queensland solicitors to develop a success framework to aid in understanding the many facets and aspects Queensland solicitors see as essential to success. The thesis also develops a model for workplace policy implementation and monitoring, and a representation of the cycle of cultural barriers operating against women.

Looking beyond State boundaries, my research has lessons for other Australian jurisdictions. While there are features unique to Queensland,61 there are also similarities between States and with other countries. The research adds to the body of work carried out concerning women in the private legal profession. This is done through: overlaying qualitative findings about solicitors on a quantitative base; the inclusion of men in the research; the use of management discourses; the development of diagnostic and practical management tools; and providing a subject specific legal profession bibliography to facilitate further enquiry. These approaches have been variously used in other jurisdictions, but all are brought to bear in this research.


61 Including the long-standing refrain that Queensland is ‘different’ from other Australian States – see, for example: O’Donnell, Marg, ‘Not just good girls’ (2008) 21 Griffith Review111.
I was drawn to Queensland research through a range of personal reasons and experiences. A focus on Queensland allowed me to tap into strong autobiographical roots. Personal experience became more than a mere catalyst, but the passion that sustained the life of the project. I saw this as a practical advantage in terms of both my background in, and working knowledge of, the profession, and the availability of a range of networks and contacts with practitioners throughout the State.

I now turn to the purposes and aims of the study. The next Section outlines both the research purposes and the practical purposes. It emphasises the need to view the lives of Queensland solicitors from as many ‘angles’ as possible to recognise the multiple contexts in which they operate.

1.5 AIMS AND PURPOSES
The first key research purpose is understanding the meaning for Queensland solicitors of their professional lives in terms of: motivations to enter and leave the profession, instances of prejudice and discrimination, how daily personal and professional pressures are managed, and how solicitors experience success. I also examine the particular context in which solicitors operate, both their branch of the Queensland profession and individual workplaces. This context includes the influences of legal professional culture, gendered experiences of that culture, and perceptions of the peak body Law Society.

I identify less easily explained phenomena and influences, such as why women solicitors embrace the ‘caring’ role traditionally ascribed to them, and why many report a lack of confidence. I consider the process by which events or actions occur within the profession, particularly what leads to women disappearing from the profession. I attempt explanations or deciphering of the relationships that link events and processes with observable outcomes.

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62 See: ‘The Catalyst – An Autobiographical Note’ prior to Chapter 1 of the thesis.
63 Seidman, Irving, Interviewing as Qualitative Research - A Guide for Researchers in Education and the Social Sciences (1998) 26; see also: Maxwell, above n 41, 15 ff, on the significance and value of ‘personal’ purposes in research.
64 The terms ‘aims’ and ‘purposes’ are used interchangeably as there appears to be no dominant pattern of usage in research texts.
65 Maxwell, above n 41, 17-20. I draw this work to clarify my research and practical purposes.
The first of my **practical purposes** is generating understandable and credible results and theories for the research participants and other stakeholders, such as the Queensland Law Society. I approach this by emphasising practitioner perspectives within their settings and contexts. A second practical purpose is conducting formative evaluations to suggest improvements in existing Queensland legal workplace practices. These purposes can inform and educate with a view to creating change.

**Engaging in a collaborative process** with the research participants is a third key practical purpose, made possible by a focus on individual context and experience, and by the creation of a strong ethical and feminist framework for this research. My research is situated within the socio-legal tradition. It seeks to understand ‘what is involved in living in the world of law, because it samples, inhabits, imagines, explores, compares, questions and confronts different participant perspectives’. Researchers have examined ‘how to study gender bias in the law, the courts and the legal profession’, and argue both law and the social sciences have made ‘parallel efforts’ to address androcentrism. There is a risk of insider bias when lawyers study themselves ‘from their own perspectives’. But social scientists, as ‘outsiders’ to the legal profession, may undertake research unaware of issues relevant to lawyers. Inside the socio-legal tradition, I seek to bring those disparate research selves and disciplines to bear in a multidisciplinary way.

In addition to the multiplicity of ‘selves’ the researcher brings to a project, she or he

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66 For distinction between practical and research purposes refer above n 41.
69 Brockman, Joan and Chunn, Dorothy E, ‘Gender Bias in Law and the Social Sciences’ in Brockman and Chunn, above n 48, 12. (Their Canadian research consultation applies to bias against women in the application of the law, as well as bias in the legal system and in the legal profession itself.)
70 Ibid, 13.
must also recognise the multiple positionings of research participants. In this thesis I endeavour to expand our understanding of the solicitors’ branch of the Queensland legal profession by viewing the solicitors and their professional and private worlds from as many angles and aspects as possible, and by using a number of disciplinary lenses. I sought an ‘illuminative evaluation’ – to make ‘key behaviours and attitudes … visible for contemplation [and] to enlighten policy makers and practitioners to the dynamics of behaviours …’72 so behaviours and attitudes can be better understood.

I developed the following Diagram 1.1 to illustrate the multiplicity of factors, and the rich contextual settings, within which solicitors articulate their lives. It provides a backdrop against which my research is positioned; and also, I suggest, against which future research can be developed. Two sets of information are displayed in this Diagram, and these can be broadly categorised as practical or daily influences and issues (pale green) and theoretical or disciplinary lenses and angles of view (purple). Both resist neat divisions and there is considerable slippage and interaction.

I include in the Diagram various workplace practices, professional and personal concerns and issues, and broader community influences (pale green). All of these affect to some degree the disparate legal lives examined in this thesis. They are included because they were specifically explored in my survey research, and/or were raised by research participants in surveys or interviews; or, came out of research about the legal profession in other jurisdictions. Positioned around these influences and issues are bodies of literature (shown in purple) – theoretical and disciplinary lenses and angles through and from which daily legal lives can be viewed.

The Diagram serves to highlight these areas of literature on which I will rely to a greater or lesser degree. Within the confines of this thesis, it is not possible to explore fully all the academic literature around ‘gender’. I argued earlier that maintaining a gender narrative in the research is vital because of the way gender shapes the legal profession, and the people within it. ‘Gender’ is an extremely broad church that encompasses a multiplicity of meanings, settings, and interpretations, as does the literature on feminism. The two dimensions of feminism and gender provide a

framework for my research, but the key focus is management discourses (such as: human resource management, organisational change, workplace culture and workplace flexibility). Hence, literature around gender and management and gender and organisation are the disciplinary angles that receive particular emphasis.

Some literature is used quite narrowly, as in the case of psychology, where my focus is on women’s self-confidence and how they succeed in the workplace. Some disciplines are called upon in the formulation of the methodology and the methods that drove the research. Feminism is particularly important in understanding reflexivity, control and agency in working with research participants. Giving voice to marginalised groups is a significant research driver, with individual narratives set against the history of the profession and pervasive popular culture. Understanding and interpreting those narratives calls upon the discipline of communicology and an understanding of discursive practices. When considering the many issues raised in relation to workplace equity issues (such as discrimination and harassment and bullying), the growing literature on equal employment opportunity – itself written from a variety of theoretical angles – was a key interpretative tool.

Diagram 1.1 serves as a reminder of the multi-layered and textured, sometimes even confused and conflicting, environments in which solicitors operate, and it sounds a caution about the complexities involved in turning the research spotlight onto solicitors’ lives. A multi-disciplinary approach allows us to better understand and explicate the nature of solicitors’ work, workplace environments, barriers they encounter, and responses and reactions to the daily pressures of legal practice.

In the next Section, following the Diagram, I will outline my research questions.
Diagram 1.1: Queensland solicitors – influences on and angles of view

1.6 THE RESEARCH QUESTIONS

My central research question asks what is the extent of prejudice and gender bias inside the solicitors’ branch of the Queensland legal profession. I ask how solicitors articulate their daily legal lives, particularly in the context of identifying experiences of discrimination or disadvantage; whether workplaces provide flexible and accessible
work practices; and whether solicitors generally identify any barriers to success and how individuals define success inside their chosen profession.

I developed a number of subsidiary or component research questions to help address the principal research question, as follows73 –

1. How do Queensland solicitors experience and understand: motivations to enter and leave the profession; prejudice and discrimination; ability to negotiate daily pressures of practice so as to balance work and family or outside interests; and the attainment of success?
2. Are women’s experiences of the Queensland legal professional culture in accordance with lawyers’ experiences in other jurisdictions generally; and with the experiences of male colleagues in Queensland in particular?
3. Are the experiences universal for all female practitioners in Queensland, or are there differences in individual women’s experiences, and what accounts for those differences?
4. Where difficulties exist, what is the response of the Queensland Law Society?
5. How does any Queensland Law Society response measure up against documented ‘best practice’ elsewhere, including the corporate world?
6. How are legal professional workplace experiences situated in terms of contemporary human resource management?74

In order to obtain data to address my research questions, I developed a research protocol with a multi-method approach that drew on both qualitative and quantitative techniques within an overarching feminist methodological framework.75 I utilised a number of methods, approaches and techniques in this research project. A State-wide

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73 I was particularly attracted to the work of Joseph Maxwell because his highly accessible model of qualitative research places the research questions ‘at the heart of the research design’ as these are the issues the researcher ‘specifically want[s] to understand’. See: Maxwell, above n 41, 49. Maxwell rejects models that place these critical questions at the beginning (where they then drive other aspects of research design and development), suggesting such models fail to ‘do justice to the interactive and inductive nature of qualitative research’. He recommends the researcher’s initial efforts be directed towards clarifying ‘purposes and context’ and perhaps even carrying out some sampling and data collection. (I was able to do this through a 1997 pilot study, and also through the administration of a state wide survey at a very early stage of the project.)

74 These questions should be distinguished from the actual survey and/or interview questions utilised in the research. These were formulated to elicit the data needed to provide some answers to the ‘research questions’ – see: Maxwell, above n 41, 53.

75 In Chapter 2, Section 2.2 Methodological Framework, p 2-2, I discusses the construction of this framework and its importance for each stage of the research.
survey sent to 550 practitioners and nearly 40 in-depth interviews, with solicitors from various locations in Queensland, were the principal means of data collection. I will describe the methodology and methods fully in Chapter 2.

I now turn to some key terminology that will be used throughout the thesis, placing it where necessary within an appropriate historical context. Defining terms assists in setting the boundaries of the research.

1.7 DEFINING THE BOUNDARIES

My research examines the attitudes and experiences of solicitors in private practice in Queensland. It does not consider (other than in a peripheral way) the specific experiences of barristers, government lawyers, in-house company lawyers, academics, or members of the judiciary in Queensland. At the commencement of this research Queensland retained what is called a split (as opposed to a fused) legal profession with two separate branches, making solicitors a distinct group from their barrister colleagues.76

In some parts of Australia (notably New South Wales and Victoria) women lawyers collectively (i.e. solicitors and barristers) developed effective joint action to improve aspects of gender equity in the legal profession. This is evident in both the professional and mainstream media coverage of women barristers’ efforts to win the universal adoption of a non-discriminatory, national briefing policy, and the well publicised input into proposals for selecting judicial officers.77 Where the focus in

76 Until Queensland passed the *Legal Profession Act 2004*, it was the only Australian state or territory where lawyers made a specific choice to become a solicitor or a barrister. (A solicitor who later decided to become a barrister needed to have their name formally removed from the roll of solicitors.) See: Haller, Linda, ‘Dirty Linen: the public shaming of lawyers’ (2003) 10 (3) *International Journal of the Legal Profession* 281, 285.

For the public, the solicitor has been the first point of contact – meeting clients in professional offices operated as sole practices or partnerships of two or more solicitors (legal practices and partnerships may also have any number of employed solicitors and support staff); while barristers (who practise at the ‘bar’) are the bewigged and gowned lawyers who take a public role as advocates before the Courts. Solicitors traditionally ‘briefed’ (instructed) barristers (or ‘counsel’) to appear on behalf of clients in litigated (to be heard in Court) matters. As we move towards a ‘national’ profession (in practice as well as in theory), as more solicitors take direct advocacy roles, as barristers become more likely to see clients direct without a solicitor interface, many of these traditional distinctions will lapse.

77 Typical examples include: re *briefing policies* – Barnes, Greg, ‘Women must fight harder’, *Australian Financial Review* (Melbourne), 26 September 2003, 52; Towers, Katherine, ‘Equitable
other research studies had been on, or included, women barristers, I was reluctant to assume, in a specifically Queensland context, that that this necessarily had equivalence for Queensland solicitors.78

This structural ‘split’ in the profession79 is effectively reinforced by the fact that Queensland is a highly decentralised State. It is the only State where more of the population resides outside the capital city than within it, and the only State to have permanent Supreme Court establishments outside the capital city. One response to this has been that various local professional associations have sprung up for solicitors. There are nineteen separate and distinct District Law Associations (DLAs) in Queensland.80 This underscored the need to hear the views of as many solicitors as briefing policy to be discussed’, Australian Financial Review (Melbourne), 31 October 2003, 57; Caddaye, Ben (ed), ‘Council’s briefing policy enjoying growing popularity’ @ the Law Council of Australia (Canberra), 27 July 2004, 2; re judicial appointments – Australian Broadcasting Corporation (Radio National), Australia Talks Back – Do We Need More Women Judges? (audio tape) broadcast 21 April 1999; Matthews, Jane (Justice), ‘Women Judges – The Great Wall’ (Speech to Women Lawyers Association/NAB Breakfast Series, 22 July 1998) published in Women Lawyers Association of Queensland Newsletter, 1999, 4-5; Law Council of Australia, Policy on the Process of Judicial Appointments 16 December 2000; Marshall, Kate, ‘Selection system “needs overhaul”’, Australian Financial Review (Melbourne), 14 June 2002, 56; Australian Broadcasting Corporation (Radio National), Law Report – Changing of the Guard at the High Court broadcast 4 February 2003 <http://www.abc.net.au/rn/talks/8.30/lawrpt/stories/s774889.htm> at 11 February 2003.

78 Queensland women barristers and a number of their solicitor colleagues were actively involved in the campaigns referred to in n 77 above. But, Queensland women solicitors, especially in regional centres, remained largely isolated from this particular groundswell of reformist energy because their routine practice of the law had little connection with the women at the Bar. Solicitors’ training and practice admission requirements, and much of their practice experience, reinforced the sense of two separate and distinct branches of the profession. Many women cross this divide and forge strong collegiate bonds through professional groups such as Queensland Women Lawyers (a constituent body of the national group (Australian Women Lawyers) and including women lawyers whether barristers or solicitors (also open to lawyers in non private practice areas e.g. government, academia, etc). But there remains an historically long standing (if, for the most part, unexpressed) antipathy between many solicitors and barristers, particularly among older members of the profession. I am personally aware of numerous disgruntled comments by solicitors over many years about barristers’ historical enjoyment of immunity from prosecution in relation to their Court work; about the fact solicitors effectively ‘shield’ barristers from irate and disappointed clients; about the solicitors’ role in acting as ‘banker and collection agent’ for barristers in the matter of fees; and equally aware of the outrage expressed by some barristers who object to solicitors aspiring to judicial and quasi-judicial appointments. On the occasion of one solicitor’s appointment to head a significant Tribunal, some barristers remarked ‘Don’t they [the solicitors] know those jobs are ours?’ It is also instructive to read a newspaper article by Queensland Chief Justice Paul de Jersey on the issue of ‘merit’ in judicial appointments. He lists some qualities or skills he sees as significant for judicial officers, while giving a clear message that the lawyers who possess those skills are barristers. See: de Jersey, Paul, ‘Equal justice for all’, The Courier-Mail (Brisbane), 16 February 2000, 17. But also see (re shift in focus in New South Wales): Carson, Vanda, ‘Solicitors rise in the pecking order’, The Australian (Sydney), 1 September 2006, 26.


80 Figure supplied by Queensland Law Society staff member at February 2005 – ‘this number has been unchanged for some years’. There are district law associations/societies in other states (29 regional law
possible across the State.

I restricted my research to solicitors in private practice. This is the group of professionals who either own (in whole or in part), or work within, private legal firms and businesses throughout Queensland. At the time of the research, Queensland law firms were unable to incorporate and, accordingly the term ‘company’ is not used. However, the terms ‘legal business’, ‘legal workplace’, ‘firm’, ‘practice’ and ‘partnership’ (where two or more solicitors operate together as principals of the legal firm) may be used interchangeably throughout this thesis.

I refer from time to time to senior practitioners or senior members or levels of the profession. These solicitors are usually (but not always) partners or principals. They have considerable status, and are widely recognisable or known within the profession, perhaps because of their acknowledged expertise and skill in specific areas, or perhaps because of their general standing in the community. They have almost always served on Queensland Law Society committees or Council, and some may even have served in the capacity of Law Society president.

societies in New South Wales and 10 country law associations in Victoria), but the combination of: solicitor-only district associations, a split profession, Supreme Court centres outside a capital city, and a greater population in regional and rural areas, is unique to Queensland. While all are affiliated with the state’s peak body Queensland Law Society, each district body has its own constitution and office bearers. There have been many occasions in the profession’s history when DLAs have worked cooperatively to oppose perceived initiatives of the ‘Queen Street lawyers’ who were seen as being ‘out of touch’ with the needs and concerns of regional practitioners. I was well aware that many solicitors had experienced the combination of split profession and decentralisation by seeing issues of specific significance to them (not necessarily limited to regional/country solicitors) as at risk of being lost in any professional debates at State level. ‘Queen Street lawyers’ is a reference to the main street of Brisbane’s Central Business District. While the regional versus capital city divide still exists for some, the 1990s and 2000s signalled something of a shift in emphasis with a number of large metropolitan firms (with an international or national focus) tending to see the Law Society as irrelevant and more representative of ‘country’ Queensland. On an individual practitioner level, it is always more difficult to convince numbers of geographically remote organisations to adopt a central agenda relevant to all solicitors, let alone to endorse the cross-professional links between the Brisbane-based Queensland Law Society and the Queensland Bar Association. This echoes the management experience of working through a central office with a number of geographically diverse work units, where those remote from head office can identify as ‘local patriots’ who remain ever sceptical of ‘outside’ solutions – refer: Gieskes, José F B, Hyland, Paul W, and Magnusson, Mats G, ‘Organizational learning barriers in distributed product development: observations from a multinational corporation’ (2002) 14 (8) Journal of Workplace Learning 310, 316.
As I have indicated, I will detail my research methodology and methods in Chapter 2. I now turn to the argument and how it will unfold.

1.8 THE ARGUMENT and HOW IT WILL UNFOLD

In this thesis I argue that ongoing discriminatory, exclusionary and outdated practices within the Queensland legal profession adversely affect many practitioners, and disproportionately affect female solicitors. As a result of these practices many women feel disadvantaged in their chosen career, as do some men. Some of these practices are illegal. All are unnecessary and out of step with contemporary professional life. I argue they adversely affect the health and future of individual solicitors and the profession generally. They are practices that are often hostile to solicitors’ enjoyment of any life outside the law.

I argue that the presence of a range of exclusionary workplace practices generates what I have termed the ‘exclusionary effect’ that operates to hold women back in terms of career progression. I argue that key decisions around future work opportunities, training and development, and promotion, often continue to be based largely upon inequitable and outdated practices. Those practices continue overwhelmingly to favour male solicitors over their female counterparts.

I argue it is not possible for solicitors to freely and openly engage in dialogue about workplace flexibility, or achievement and success, where discrimination continues to permeate legal lives and workplaces. Add-on or ad hoc policies to counter discrimination, or to promote workplace flexibility, or the offer of ‘alternative’ career paths, will be ineffective and essentially meaningless if not built on strong foundations of zero tolerance of workplace discrimination as well as an equal opportunity, civil and inclusive culture at every stage of the legal professional journey.

Change requires leadership and management skills. I argue that the profession, particularly as represented by small and medium size practices throughout the State, needs leadership from the peak body Queensland Law Society. Such leadership is particularly urgent as most solicitors are ill equipped on an individual basis to meet the human resource management challenges created by the issues raised in this thesis.
In developing the arguments, I demonstrate that the lived experiences of women in the solicitors’ branch of the Queensland legal profession continue to replicate and represent a long theoretical history of stereotypes, role traps, ‘otherness’ and difference that historically underpins the profession of law. Women do not necessarily ‘fit’ the male role models that have typified the private profession. Women and the significance of their contributions to a growing profession are overlooked in debates about the future of the Queensland profession and their place within it. Because of the traditional ways legal firms are organised and managed, not only is there an historical legacy of exclusion and marginalisation of women, but women continue to be represented in lesser numbers and at lower levels of their chosen profession.

The dominant client service discourse is used not only to justify the long working hours, but also to inhibit debate about different modes of working. I demonstrate that individual solicitors and law firms acknowledge the inappropriate and inequitable nature of some practices and traditional ways of working, particularly aspects of informal and formal networking, work allocation, mentoring, training opportunities, marketing and client entertaining; and practitioners report that it is men who are more likely to benefit from these continuing practices.

I demonstrate in this thesis that both female and male solicitors recognise the organisational difficulties involved in responding to entrenched attitudes and practices, in listening to a wider community pressure for more engagement with family and community, and in implementing new ways of working; just as they recognise the complex, multi-layered nature of ‘success’. These practitioners have much to contribute to the debate. At the very least the Queensland Law Society could take a lead in providing safe, inclusive and transparent avenues for solicitors to engage in critical conversations about their individual futures and the future of the profession.

In this Chapter, I outlined the central thrust of the research as exploratory, to enquire whether prejudice and bias exist inside the Queensland legal profession, and

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81 Exploratory research proceeds by ‘exploring data rather than testing clearly formulated prior hypotheses’ – see: Jary and Jary, above n 68, 202. ‘Exploratory researchers are creative, open minded,
to enhance our understanding of how solicitors articulate their daily lives around three key themes: workplace discrimination, flexible work practices, and success. I explained the limits of the project, and its significance in general terms as well as within the State context. I introduced some concepts around the view of women within organisations in general, and within the legal profession in particular, while arguing for the importance of maintaining a gender narrative within the research.

**Chapter 2** constructs the overarching methodological framework within a feminist research tradition. It describes the mixed methods research protocol that I adopted, utilising both quantitative and qualitative approaches. The Chapter discusses the particular relevance of a multi-method approach for my research. The individual methods are tied back to the research questions posed in Chapter 1. Chapter 2 also emphasises the importance of ethical research, and outlines the benefits of a feminist approach within the broader organisational context.

**Chapter 3** questions why Queensland women and men choose to become solicitors, and why many women are leaving the profession. It considers some aspects of the history and culture of the modern profession, and looks at how traditional culture continues to affect the present-day Queensland profession. The Chapter discusses the research sample in more detail and how it ‘fits’ with Queensland solicitors today. It examines the involvement of women in both membership and governance roles in their profession. It also reviews findings about women in the legal profession in other, Australian and overseas, jurisdictions.

**Chapter 4** looks in detail at the first of the three key research areas: workplace discrimination and harassment. An examination of these exclusionary practices also provides a foundation upon which the subsequent Chapters of the thesis are based. A discrimination free workplace and inclusive culture is needed before solicitors can engage in open dialogue about workplace flexibility, which is itself vital to solicitors’ concepts of success. The Chapter introduces a number of concepts that underpin this, and subsequent, Chapters, namely: women as ‘other’; role traps and stereotypes; the

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and flexible; adopt an investigative stance; and explore all sources of information’ – see: Neuman, W Laurence, *Social Research Methods - Qualitative and Quantitative Approaches* (3rd ed, 1997) 19.
effect of role traps on ‘choice’; workplace mobbing that targets ‘black sheep’ who do not ‘fit’ the workplace norm; and mobbing or exclusionary factors (‘millstones’) that effectively deny women equal professional participation. The Chapter considers the stereotypes or role traps identified by Kanter, and specifically how discrimination can force women into role traps whereby women ‘find their place’ in traditionally male domains. A specific contribution of the thesis is the development of Kanter’s typology through to the present day legal workplace. The Chapter reviews the privileged place sport continues to hold within legal professional culture. It also considers the concept of workplace mobbing and draws on this relatively new human resource management field of inquiry to develop a list of Exclusionary Indicators. I develop in diagrammatic form a model that depicts how these indicators can lead to ‘exclusionary overload’ and create what I term an ‘exclusionary effect’ operating against (principally) women in the profession.

Chapter 5 turns to the second main research area around aspirations for flexibility and family friendly workplaces. It considers the dominant client-service discourse in a solicitor’s legal practice and argues this acts as a barrier to flexibility. The Chapter canvasses the idea of ‘alternative’ career paths that may admit of a better balance between work and care responsibilities, and details the gap between flexible work policies and policy utilisation. It also examines the sacrifice many women make in order to be seen as serious professional contenders, and looks generally at the stressors and pressures practitioners face in their daily lives as solicitors. The Chapter discusses the stereotype of the unencumbered male solicitor norm or standard as a potential obstacle to profession wide acceptance of compatibility between parent and professional.

Chapter 6 examines the third key area, the concept of success, and how the research participants themselves grapple with this problematic notion. Specific barriers to success for women are examined, and women’s own expressed lack of confidence is considered. The Chapter builds on material from the earlier Chapters to demonstrate that continuing discriminatory traditions and beliefs, combined with very limited and ad hoc access to flexible work practices, mean that, for some women at least, success comes at a price that their male counterparts do not have to pay. The Chapter draws together survey and interview data to develop a success framework for Queensland
solicitors.

**Chapter 7** summarises the main thesis findings around discrimination, flexibility and success in the practice of law. The Chapter considers the ability of the profession to manage these key areas in their various legal workplaces, and the significance of management skills. It highlights why well-intentioned policies and procedures may fail and propounds a practical model for implementing workplace change. It looks to the role of the Queensland Law Society and examines the views of Queensland solicitors on the role their peak professional body might play in shaping the future of the profession. The Chapter posits some strategies for change and for the more effective management of practitioners’ needs and expectations within 21st century legal practices. It also looks at future research possibilities.
# CHAPTER 2. METHODOLOGY AND METHODS

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CHAPTER 2. METHODOLOGY AND METHODS

‘Feminists have, in general, abandoned the search for and denied the possibility of a disinterested and dislocated view from nowhere’
> Lorraine Code

You’ve just got to study [the solicitors’ branch of the profession] for a period of time, and talk to as many people as you possibly can …
> man – 40s – former partner – regional

2.1 INTRODUCTION

As I foreshadowed in Chapter 1, this Chapter examines the particular methodology and methods employed in my study of the solicitors’ branch of the Queensland legal profession. Initially, it discusses the rationale for adopting an over-arching feminist framework inside which I conducted the multi-method, interdisciplinary and exploratory research. The Chapter also briefly outlines the importance and extent of ethical considerations in the research.

The Chapter describes the multi-method approach, which in this thesis incorporates both quantitative and qualitative methods. It discusses the purposes of multi-method research generally and the particular relevance of those purposes to my research. It then details each of the seven techniques, approaches and methods that I have used. These are: a Queensland-wide anonymous survey, the inclusion of men in the research, a statistical analysis of quantitative survey data, semi-structured interviews, a literature review, an examination of discursive practices, and feedback. Finally, this Chapter links these individual methods to the various research questions that I posed in Chapter 1.3

At the outset I discuss the broad perspective or stance that frames and guides the research project.

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2 I(m)42: 24 (interview conducted 2006).
3 The research questions are set out in Chapter 1, Section 1.6 The Research Questions, p 1-20.
2.2 METHODOLOGICAL FRAMEWORK

Throughout this thesis I use the term ‘methodology’ to refer to the theoretical perspective or underpinning of the work, in contradistinction to ‘methods’ which I use to refer to individual techniques and strategies I have used in gathering the research data. A feminist methodology is one way of exploring knowledge production, of seeking connections and linkages between ideas (including theories of gender and of knowledge itself), experiences (how lawyers ‘make sense’ of their world), and material and social realities (such as relationships, sources of power, and legal institutions that can affect lawyers’ lives, whether or not they are aware of them).

While many have criticised feminist knowledge production, others have cogently defended the feminist approach in both its contribution to a viable research tradition, as well as its philosophical and intellectual base. Feminist research will frequently include the researcher as a person. Personal experiences may be seen as a valuable asset. Personal accounts may be integrated into the report of the research project. Researchers may even have the courage to introduce passion ‘violat[ing] the norms of dispassionate [traditional] research’ methods; and, as is the case in this project, they may even ‘explicitly study a phenomenon that concerns [them] in [their] “personal”’

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5 Ramazanoğlu, above n 4, 9.

6 See generally: Bell, Diane and Klein, Renate (eds), Radically Speaking – Feminism Reclaimed (1996); Meyers, Diana Tietjens (ed), Feminist Social Thought: A Reader (1997); Ramazanoğlu, above n 4; Reinhart, above n 4. James Scheurich recognises the real commitment of some researchers to critique the status quo or oppose injustice, but gives a timely warning that ‘we researchers’ are ‘unknowingly enacting or being enacted by deep ... cultural biases damaging to others because we do not hear them, or “they” do not speak “our” cultural language’ – see: Scheurich, James, Research Method in the Postmodern (1997) 1. This caution calls into question not just the basis of feminist knowledge making, but also the foundations of all knowledge and its production. Also: Rosenau, Pauline Marie, Post-Modernism and the Social Sciences - insights, inroads, and intrusions (1992).
life ... merg[ing] the “public” and the “private”’.

Traditional methodological literature overlooks ‘the variety of attributes that researchers bring to the field’ as well as minimising ‘the wide range of selves created in the field’. Shulamit Reinharz identifies some 20 different selves under three broad categories from her own fieldwork notes, and points out that it is the ‘brought’ and ‘created’ selves that have primary relevance to research participants, as these will ‘shape or obstruct the relationships the researcher can form and hence the knowledge that can be obtained’. My relevant ‘selves’ as researcher in this research include: (a) research based selves (being a researcher, a good listener, someone trained in interview techniques, a mediator trained in recognising ‘non-verbal’ cues, someone with professional expertise in assessing workplace problems (especially equity based issues), someone trained in giving feedback); (b) brought selves (those ‘givens’ of being a woman, a lawyer, a Queenslander, an academic, a retired solicitor); and (c) situationally created selves (having an ongoing connection to the profession, a friend, a mentor/sounding board/confidante to others within the profession).

Some commentators posit the self as ‘the key fieldworking tool’, and laud the role of the human interviewer, who ‘can be a marvellously smart, adaptable, flexible instrument who can respond to situations with skill, tact, and understanding’. Clearly, where the researcher may share insider knowledge or common experiences with the researched, the researcher holds considerable power ‘to interpret their selection of data through their own ideas and values, and in terms of their chosen epistemology ...’ What is ‘feminist’ in this interpretation process is ‘the theoretical framework, and the political and ethical concern with deconstructing power relations,

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10 Reinharz, above n 8, 3.
and making the researcher accountable for the knowledge that is produced’.  

Mona Harrington grappled with giving a ‘voice’ to the various ‘selves’ of the researcher, and was acutely conscious of her ‘privileged role as interpreter’ in the post-interview process. She concluded she would present the experiences of women lawyers she interviewed ‘by listening to them as attentively as [she] could’ and that she would also ‘speak [her]self about the relation of that experience to larger political questions’. Her reflections on her research approach resonate with my own search for researcher, and participant, voices –

Like my interviewees, I speak as a woman trained in the law, but, unlike most of them, as a woman who has left the law ... and who now speaks as a writer vitally involved with feminist issues and questions of equality ... This is the sensibility that frames my judgements about the stories I have heard. I have tried to make my voice clearly distinguishable from those of the women talking to me, and I hope that I have done justice to the multiplicity of views they have conveyed.

In terms of the style of the thesis, I present all direct quotations from the women and men research participants in italic script within the thesis, to ensure that their stories and views are clearly, and graphically, distinguished from my own views and the views of others whose work informs this thesis.

In a review of Margaret Thornton’s seminal work on women in the Australian legal profession, Dominique Tubier opined that the nature of Thornton’s work was such as to raise the criticism of ‘essentialism’. She suggests that this was dealt with adequately ‘at the outset’ by Thornton acknowledging that –

While consideration of women as a homogenous group has been a self-reinforcing behaviour of the legal system and its benchmark man, a focus on difference can also prove paralysing for feminists in this situation … It may be necessary to examine the situation as it applies to all women before it is possible to delve into the complexity of intersectionality and to consider the complex interplay of characteristics which composes a single woman.

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14 Ibid, i-ii.
16 Ibid, 270-271.
At one level, it has been necessary when undertaking this research with women lawyers to engage with their ‘otherness’ as a group so that their stories can ‘be told in order to understand better the gendered constitution of legal knowledge’ within the Queensland profession. However, the multi-method approach that has been adopted in this research project allows exploration of differences between women within, and outside, the Queensland profession, specifically through the survey, the statistical analysis, and the literature review. It provides the opportunity to draw contrasts and comparisons between women and men within the profession, again through both qualitative and quantitative methods and the inclusion of men in the research.

Recording and retelling the stories of the women participants themselves may prove the best strategy against straying into essentialism, because ‘women lawyers’ life realities and professional ambitions are far too complex, diverse, and contextually divergent to be subsumed under any one category’. With surprising regularity in my research, participants themselves carefully framed responses to ensure they were not attempting to speak for ‘all’ solicitors.

My commitment to a feminist methodological approach is an effective way of acknowledging, and managing, key issues around the voice and multiple selves of both researcher and researched; the value of self-reflexive research practices, and

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19 ‘Surprising’ because I was warned by some experienced research colleagues that lawyers tended to give very ‘definite’ answers and to ‘generalise’ their opinions in wide terms. My observations were that they may do this when speaking about their own expert area of legal practice. But when asked about a range of personal attitudes and experiences, responses were invariably considered and thoughtful, with solicitors anxious to ensure I understood their reply as being individual to them and their situation.
20 Typical examples of this included: *my experience is limited by the places that I’ve been in... worked within – I(m)72:2 [man – 40s – partner - metropolitan]; I think it’s easier for men - it seems easier - you see, I’m not a man, so I don’t know – I(f)80: 3 [woman – 30s – employed solicitor – regional]; I can only speak for myself, I don’t have the answers for everybody else – I(f)39:24 [woman – 50s – principal – regional] (emphasis hers); [the treatment you receive at work] depends on who you work with and the atmosphere that they create – and that’s not firm by firm, it’s division by division – I(f)44: 12 [woman – 30s – senior associate – metropolitan] (emphasis hers); also: I(m)75:5, I(f)31: 4, I(m)36: 9, I(f)43: 24, I(f)71: 9.
21 An advantage of the supervised research project is the avenue for critical feedback, and the fact that the ongoing academic project of participation (as an author in journals and a speaker at conferences) also invites a reflective critique on work in progress, both from research participants and from one’s peers (in this case, both academic and legal). Also see: Wasserfall, Rahel, ‘Reflexivity, Feminism, and Difference’ in Hertz, above n 8, 150, 153.
the sometimes powerful, sometimes ambiguous, position held by the researcher at various stages of the project. It alerts both researcher and reader to any standpoint the researcher adopts. It highlights the danger, and the value, of an essentialist view of ‘women’ or ‘solicitors’ as a group. It also works within a postmodern tradition to challenge researcher and reader to think outside narrow and restrictive dualisms and simplistic interpretations of the daily legal world of solicitors. Feminism can inform a ‘more sophisticated understanding’ around ways social research can be carried out ‘where the interests of those at the margins ... are central to the research process’.22

I suggest the feminist commitment to ethical and collaborative research practices ensures that the ethical aspects of this research extend beyond mere compliance with the requirements of an institutional Human Research Ethics Committee.23 In the next Section, I consider briefly the ethical aspects of this research.

2.3 ETHICAL CONSIDERATIONS

Caroline Riessman argues, if a ‘sensitive collaboration has not occurred … we may have “heard” nothing’.24 More importantly, ‘the value of any research is that its findings are recognizable to the [participants]’25 while ensuring the delicate balance between publicity and privacy is maintained. I also agree that the ethical obligations of social scientists extend beyond the research participants, encompassing the wider research population and potential stakeholders, the community generally, and research colleagues in particular.26 Ethical requirements informed each stage of this project. In an overt sense this directly affected issues of informed consent, confidentiality of

23 All interview tapes and typed interview transcripts, and all returned survey instruments are lodged with Griffith University in keeping with the University’s Human Research Ethics Committee ethical clearance requirements for the project (ref: HREC LAW/02/01).
26 Berg, Bruce L, Qualitative Research Methods for the Social Sciences (6th ed 2007) 53; also: Lindorff, Margaret, ‘We’re All Ethical Aren’t We? A Reflection on Researcher Values in Organizational and Management Research’ (Working Paper Series #4/06, Monash University Faculty of Business and Economics, Department of Management, March 2006). (Cited with permission of author.)
data, anonymity of participants, access to records and the like. But, in a less obvious, but critically important, way it informed every interaction with direct participants, with informants, with professional stakeholders, and with research and legal colleagues.

Ethical obligations are writ large where qualitative interviewing techniques are utilised; and, accordingly, the researcher’s own ‘honesty and fairness, knowledge, and experience’ will be decisive. Open and transparent processes remain the key to a researcher ensuring fair dealing with all participants and an open and ‘unbiased’ reporting and interpretation of shared stories and information. This is particularly important where participants share what may be confronting, painful, and highly sensitive aspects of their professional or personal lives.

In the next Section I examine the specific methods, strategies and approaches I adopted to explore my research questions and thus to generate the research data.

2.4 THE METHODS

I utilised seven methods, strategies or approaches. These were: an anonymous survey instrument, the inclusion of men as research survey participants, quantitative statistical analysis, semi-structured interviews, a literature review, an examination of discursive practices, and feedback to and from participants and stakeholders. For convenience, they are grouped under the heading ‘methods’.

The inclusion of men in the survey phase of the research meant they were sent the same survey instrument as was forwarded to the women. However, I have made separate reference to the inclusion of men in this way because this was a departure from the approach followed by some other researchers and was considered important to my research. It can be argued that a strategy such as the inclusion of men is not strictly a ‘method’ but rather the involvement of a particular group in the survey and

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27 For information and introductory correspondence for research participants see: Appendix 1.
28 Kvale, Steinar, InterViews – An Introduction to Qualitative Research Interviewing (1996) 117.
30 See discussion this Chapter, Sub-Section 2.4.2 Inclusion of Men, p 2-12.
interview phases of the research. Similarly, quantitative analysis may be not so much a discrete ‘method’ as a technique for extracting data from the survey. I have listed these separately to highlight the importance of each to my research, and to show more clearly the role of each in addressing the various research questions I posed in the opening Chapter of this thesis.  

In considering the qualitative-quantitative divide, one argument favouring qualitative research posited that ‘locally, temporally and situationally linked narratives are … required.’32 Certainly, John Hagan and Fiona Kay identified ‘a tradition of research on lawyers that has emphasized particular settings’.33 Quantitative approaches promised other benefits, as did the advantages that might accrue from using ‘mixed’ methods.34 I agreed that quantitative and qualitative approaches were no longer seen as ‘uniquely different’ because these paradigms can be more reasonably understood as ends of a continuum where both ultimately seek to ask the same questions about ‘how’ and ‘why’.35

An important advantage of a multi-method approach is the measure of researcher control in that it is ‘a choice, rather than a trap’.36 It allows an examination of research questions from a variety of angles. Triangulation of data has long been seen as a way of enhancing the validity of research findings.37 This involves “adding” one layer of

\[\text{See: Section 2.5 Methods and Questions, p 2-25, esp Table 2.4: Research methods tied to research questions, p2-26.}\]

\[\text{Flick, Uwe, An Introduction to Qualitative Research (1998) 2. Her features of qualitative research were also attractive, incorporating (at 25-27): (i) appropriate theories and methods responsive to the situation’s complexities, (ii) diverse participant perspectives, (iii) researcher reflexivity, and (iv) a variety of approaches.}\]


\[\text{Tashakkori, Abbas and Teddlie, Charles, Mixed Methodology - Combining Qualitative and Quantitative Approaches (1998).}\]

\[\text{Ibid, 30, 32. Also, I could see no impediment to Flick’s (above n 31) hallmarks of qualitative research embracing a multi-method approach that crossed the qualitative-quantitative divide. See also: Shah, Sonali K and Corley, Kevin G, ‘Building Better Theory by Bridging the Quantitative-Qualitative Divide’ (2006) 43 (8) Journal of Management Studies 1821.}\]

\[\text{O’Neill, Brenda, ‘The Gender Gap: Re-evaluating Theory and Method’ in Burt and Code, above n 1, 327, 354. The researcher is not ‘trapped’ by a single method that may not adequately address all aspects of the research project and she/he has choices about what method will best serve the project at various points.}\]

\[\text{See, for example: Maxwell, Joseph A, Qualitative Research Design - An Interactive Approach (1996) 75; Neuman, above n 4, 150-151; Creswell, John W, Qualitative Inquiry and Research Design – Choosing Among Five Traditions (1998) 251.}\]
data to another to build a confirmatory edifice’, and has led an increasing number of researchers to ‘use multi-method approaches to achieve broader and often better results ... [and] to use different methods in different combinations’.

Laurel Richardson suggests ‘there are far more than “three sides” from which to approach the world’. She takes issue with the assumption there can be a ‘fixed point’ that can be triangulated, and proposes ‘crystallisation’ as a more useful and powerful metaphor. ‘Crystals grow, change, alter, but are not amorphous ... [they] reflect externalities and refract within themselves ... casting off in different directions. What we see depends upon our angle of repose’.40

The views I have outlined coalesced in the Abbas Tashakkori and Charles Teddlie summary of the purposes of mixed methods studies. In Table 2.1 I develop and link these purposes directly to my own research. The Table outlines five key purposes and explains the nature of each, and lists specific examples of how they fit my particular research project –

40 Richardson, Laurel, ‘Writing: A Method of Inquiry’ in Denzin and Lincoln, above n 37, 923, 934.
**Table 2.1: The relevance of a multi-method approach**

<table>
<thead>
<tr>
<th>PURPOSE</th>
<th>EXPLANATION</th>
<th>RELEVANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Seek convergence</td>
<td>Often referred to as a ‘triangulation’ of results (or ‘crystallisation’) (many aspects/facets/angles of view).</td>
<td>By examining issues within the profession from varying aspects and by various methods, the argument for the validity of results is more persuasive.</td>
</tr>
<tr>
<td>2. Examine complementarity</td>
<td>Looking at overlapping and different facets of a phenomenon.</td>
<td>Using survey, interview, and content analysis (e.g. of Law Society reports) brings together some very different aspects of issues such as workplace treatment of solicitors.</td>
</tr>
<tr>
<td>3. Achieve initiation (a new approach)</td>
<td>Discovering paradoxes, contradictions, and fresh perspectives.</td>
<td>Encouraging interview participants to talk about ‘solutions’ to identified issues opens up new possibilities.</td>
</tr>
<tr>
<td>4. Allow results development (to use methods sequentially)</td>
<td>With results from first method informing the second, and so on.</td>
<td>Using preliminary survey findings to inform a semi-structured interview schedule allows for a greater focus on key issues.</td>
</tr>
<tr>
<td>5. Achieve expansion</td>
<td>Adding breadth and scope to the project.</td>
<td>The ‘voices’ heard directly during the interviews create a richness of data and suggest other areas of exploration/inquiry.</td>
</tr>
</tbody>
</table>

I now consider each of the individual research approaches in turn. All are positioned within the broader commitment to ethical research practices.

**2.4.1 SURVEY**

As the legal profession remains, in many respects, a very traditional profession, I considered a formal, mainstream research method such as a written survey was likely to have a higher level of acceptance than would other methods such as initial interviews, or focus groups. A survey\(^{42}\) permitted a broad examination of the subsidiary research questions. It allowed a degree of flexibility about how the research might progress from that point. The survey was a lengthy instrument\(^{43}\) that asked solicitors to consider the lives of lawyers from some preliminary demographic issues; through reasons for becoming, and remaining, a lawyer; perceived treatment within workplaces and the existence of workplace policies and entitlements; the pressure of work and the use of coping strategies; understandings about types of

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\(^{42}\) Renate Klein expressed ‘serious doubts about the validity of having people fill in questionnaires’, but in the context of the profession and the issues, a survey seemed an appropriate method, or, more accurately, a ‘starting point’ for the project – see: Reinharz, above n 4, 209, citing Klein (1988).

\(^{43}\) See: Appendix 2.
lawyers, what makes a ‘good lawyer’, and what constitutes ‘success’.

I sent anonymous survey instruments to 550 Queensland solicitors in 1999-2000. Participants numbers were initially limited to 500 (250 women and 250 men). I used a stratified sampling approach based on gender and location (postcode). The driver was not so much what proportion of solicitors might give a particular response to a particular question; but, in keeping with the exploratory nature of the research, ‘obtaining an idea of the range of responses or ideas’ that solicitors might have. Legal colleagues voiced persistent concerns that very few practitioners would reply. Some Queensland Law Society staff also cautioned that the survey was likely to attract a poor response rate, with a figure of only ten percent ‘at best’ being suggested. As a result, I undertook a second stage of selection and included an additional 50 potential participants, again an equal number of women and men.

The resultant sample size (N=550) was a ‘hybrid’ of sampling techniques. However, it is ‘unlikely’ any sample ‘will be perfectly representative, as by chance there will be

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44 I initially approached the Queensland Law Society (QLS) with the assistance of QLS Committee staff who supported the project. Staff encouraged me to apply for research funding from the Society and its associated body, the Queensland Law Foundation, to help defray the survey costs. Both declined to assist financially, but the Society did provide participant names and addresses.

45 I had no direct access to Queensland Law Society records. Society staff selected participants. Staff advised that the following selection decisions were made: (i) the population was limited to solicitors holding current practising certificates (maximising the probability they would be in private practice); (ii) all potential participants were listed in postcode order by the Society (workplace postcodes 4000, 4001, 4002, etc the Brisbane metropolitan area) headed the list, then on in postcode order through the state; (iii) the potential participants were split into two lists – women and men; (iv) the Society took the total number of women on the list (980 at that time), divided that by the 250 participants required (=3.92), and they then ‘selected’ every fourth practitioner on that list to generate the 250 mail labels; (v) a similar procedure was adopted for men (3067 male solicitors divided by 250 = 12.27) with every twelfth practitioner on that list being selected to a total of 250. This selection method failed to use a ‘random seed’ as the starting point for selection. But ‘population size [was divided] by the required sample size’ for ‘stratified systematic sampling’ – refer: de Vaus, D A, Surveys in Social Research (4th ed 1995) esp 64, 65.

46 De Vaus, above n 45, 77.

47 These were selected from solicitors who were members of various Law Society Committees. All female and male members of the then Equity Committee were included on the basis they had some particular interest in the survey issues, with the balance chosen with input from individual Equity Committee members (creating a snowball sampling effect where already selected participants nominated other contacts - see: Jary, David & Jary, Julia (eds), Collins Dictionary Sociology (3rd ed 2000) 557). I saw these potential participants as having a particular interest in the research and perhaps even bringing some special knowledge or ‘authority’ to bear – see: Fink, Arlene & Kosecoff, Jacqueline, How to Conduct Surveys - A Step-by-Step Guide (1985), 59-60.

Note: due to the anonymity of the returned survey instruments, it is not possible to tell which survey came from a ‘first stage’ or ‘second stage’ sample selection – all survey responses were analysed as a single group.
differences between the sample and the population’.48 The final number chosen assists
in countering any concerns about the sample selection. The 275 women solicitors
equated to just over 28 (28.06) percent of all women then holding practising
certificates; while 275 men represented nearly 9 (8.97) percent of all men holding
practising certificates.

There was a strong response rate (40.73 percent of women surveyed, and 34.91
percent of men surveyed). I suggest this indicated solicitors saw a real need to have
some input into issues covered in the survey and to raise specific concerns. This was
particularly so in view of the time commitment required to complete the lengthy
survey instrument, as well as the number of people who took the opportunity to
include written comments.49 I was particularly confident about being able to
generalise from the data gathered from women, and also considered that valuable
comparisons could be explored between experiences of women and men in the
profession.50 In actual numbers, the survey yielded a total of 206 valid responses
(women N=110, men N= 96).51

2.4.2 INCLUSION OF MEN
Feminist researchers have not always restricted themselves to the study of women.
Some have expressed commitment to ‘the scrutiny of male lives for the sake of
showing the play of power in its fullest sense ...’52 Important work on women in the
legal profession in Canada included men in surveys and interviews.53 I considered
failure to seek male responses would substantially reduce potential for acceptance by

48 De Vaus, above n 45, 136. Moreover, the nature of the research was ‘exploratory’ and I was
effectively looking to identify ‘big issues’.
49 In late 2002 The Queensland Law Society conducted its ‘first member survey’ described in the
later section of that report, under Performance Highlights (at 18) the Society reported a response rate of
‘nearly 19% of total membership’.
50 Such a comparison would address my second subsidiary research question that queried whether
women experienced more difficulties inside the legal profession culture than did men.
51 There were 112 responses from women, but two of these indicated they worked for State
Government departments and responses were directed to those workplaces, rather than to the private
practice environment. Responses of these two women were not included in the subsequent analysis.
52 Cited in Reinharz, above n 4, 143.
53 See: Hagan & Kay, above n 33; Brockman, Joan, Gender in the Legal Profession – Fitting or
Breaking the Mould (2001). One reviewer of Joan Brockman’s work described her decision to
interview equal numbers of women and men in her qualitative study as ‘a bit puzzling’, but went on to
concede that ‘the men’s voices do add another dimension to the data and to Brockman’s insights’ – see:
the Queensland profession’s peak body and, hence, reduce potential for change. I also believed it was important to be open to possible similarities\(^{54}\) that emerged so that those similarities could be examined. I anticipated that information obtained about women would be more cogent because of the ability to readily compare it to, and contrast it with, responses given by men.\(^{55}\)

As I have indicated, I elected an initial survey approach as more likely to be familiar and acceptable in the ‘malestream\(^{56}\) legal world. The comparison of themes and ideas in responses of women and of men allowed an exploration of career experiences and differences between women and men.\(^{57}\) My research inquired into whether women solicitors were experiencing more, or different, difficulties than their male counterparts, but I remained mindful of the dangers of an ‘essentialist view of gender’, ‘of locking male and female into the gender dichotomy that underpins inequality’.\(^{58}\)

### 2.4.3 STATISTICAL ANALYSIS

The high survey response rate generated large amounts of data,\(^{59}\) and I utilised descriptive statistics as a method ‘for presenting quantitative descriptions in a

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\(^{54}\) See, for example: Sheridan, Alison and Milgate, Gina, ‘Accessing Board Positions: A Comparison of Women’s and Men’s Views’ (CENWAB Discussion Papers #2003-06, Centre for Women & Business University of Western Australia, 2003) 8.

\(^{55}\) Margaret Thornton did not interview men because she saw ‘the experiences of women in the legal profession are far more than the mirror images of the experiences of men of law, and ... methodological neutrality would [not] have been achieved by such an approach’. (Thornton, above n 17, 4-5.) A similar view (to Thornton’s) was taken in: Nossel, Suzanne and Westfall, Elizabeth, *Presumed Equal – What America’s Top Women Lawyers Really Think About Their Firms* (1998) – where their stated intent (at xiii) was ‘to give women an idea of what life in particular firms is like for other women’. This view was maintained in the 2006 edition of *Presumed Equal* – see: Blohm, Lindsay and Riveira, Ashley, *Presumed Equal – What America’s Top Women Lawyers Really Think About Their Firms* (3rd ed 2006) xiv, where the authors stressed that ‘despite the gendered focus, our findings should still be of value to men who struggle with work and family conflict’.


\(^{59}\) The survey instrument was lengthy and sought quantitative responses from participants, but also provided numerous opportunities for qualitative comments by participants throughout the survey. The task of coding the survey questions and responses for formal statistical analysis proved complex due to an original survey design that had not taken account of such a possibility.
manageable form’. I established a database within Statistical Package for the Social Sciences (SPSS) software to enable an examination of ‘patterns and regularities’ and not only mere numbers. I flagged within the SPSS database any optional qualitative comments made by participants. This enabled cross-referencing of statistical data with observations, explanations and examples included by individual participants.

The statistics relied on in this thesis hinge on univariate analyses to provide the basic descriptive statistics, and bivariate analyses by gender and other demographic factors. I also conducted a series of simple multivariate analyses that take into account the interactive effects of some of the key variables or demographic factors. I was able to compare participant responses within multiple contexts such as sex, age, firm size, metropolitan as opposed to regional location, position within their firm, personal background, and parental status. This was seen as a powerful tool to avoid the essentialist trap of grouping all women (or men) behind majority responses and views, and to allow for a better understanding of different issues faced by different participants.

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61 The final database was too extensive to utilise an Excel spreadsheet or similar software.
63 Various tests for statistical significance have been used, as appropriate: Chi-square ($\chi^2$), Mann-Whitney (MW-U), and Kruskal-Wallis (KW).
64 The initial survey question (Q1) asked participants to indicate their sex (‘male’ or ‘female’).
65 The survey instrument asked participants (Q2) to indicate their age in one of five categories from 20-29 through to 60+. For analysis, these categories were combined into two levels (20-29 and 30+).
66 Participants were asked about firm size based on the number of lawyers in their workplace (Q3). Firm size was divided for convenience into three groups: firms with 1-10 lawyers; with 11-79 lawyers; and with 80+ lawyers. (Note: the Queensland Law Society had no ‘policy’ on how firm sizes are grouped with QLS staff advising it depends on the context.)
67 Survey participants were asked the postcode of their workplace location (Q4). To analyse metropolitan as against regional responses, postcodes were grouped in accordance with a report (Metropolitan and Country Post Code Ranges) from Australia Post Customer Service used by a Griffith University Research Fellow since 1999. Hence postcodes 4000 to 4209 were classed as Brisbane Metropolitan, and 4210 to 4999 were classed as Queensland Regional. See: Appendix 4.
68 The survey (Q5) asked participants to indicate their position – whether they were a partner/principal, an employed solicitor, or ‘other’ (which could mean ‘associate’, ‘consultant’, ‘special counsel’ or some other terminology/position adopted by a particular firm). For analysis, participants were usually divided into partner/principal and non-partner/principal groupings.
69 This survey question (Q6) sought some personal background information as to whether they had a professional parent, whether they attended a private school, whether they had a career prior to law, and whether they were undertaking current tertiary studies.
70 The survey (Q7) asked participants whether they had children.
2.4.4 SEMI-STRUCTURED INTERVIEWS

I used a preliminary analysis of survey data to formulate a schedule,\textsuperscript{71} setting out key areas or issues to be canvassed in follow up, semi-structured, in-depth interviews in the second stage of the project. These included: how the solicitor viewed success; whether the solicitor was aware of examples or situations of workplace discrimination; whether there was an ‘invisible rule book’ that placed different pressures on women and men; personal experiences of legal practice; whether solicitors saw ways in which the legal workplace could be made more flexible; what success meant for them; and strategies for change. Thus, data from a state wide survey provided an insight into the experiences of Queensland solicitors, while rich interview material served to confirm survey results and add layers of valuable nuance and meaning to build a deeper understanding of solicitors’ lives.

Interviewees were selected from those who (at the conclusion of the survey) returned an expression of interest in the interview phase. A significant number of the survey participants (46.36 percent, N=51, of women who returned a validly completed survey instrument; and 33.34 percent, N=32, of men) indicated interest in participating in the second stage. These constituted the pool from which the survey group interviewees were selected. Practicalities limited the number of survey group interviews to 26.\textsuperscript{72}

Between the period 1999-2000 (when survey instruments were completed) and 2005-2006 (when interviews were conducted),\textsuperscript{73} 16 of the 51 potential female survey group interviewees ‘disappeared’ from their nominated work address (provided for

\textsuperscript{71} The semi-structured interview schedule (a guide only) is included at Appendix 3. Interviews were carried out over an 18-month period in 2005-06.
\textsuperscript{72} My training in human resources management, mediation, and communication led me to conclude it was important, if possible, to conduct interviews face to face, and this was achieved with one exception. Participants were selected at locations I travelled to for (unrelated) work purposes, with names selected in a ‘blind’ draw from all expressions of interest from that particular location. I was able to include four regional cities, one rural location, and a range of interviewees in the capital city (based over several visits). Also, some interviewees had worked in a range of locations throughout the state and were able to offer information and insights relevant to more than one geographic location and/or firm size or type. (Only a few of these interviewees were coincidentally known to me.)
\textsuperscript{73} The need to pursue the research part time, the lack of funding sources, a change of university after the commencement of the research, the unexpectedly high response rate and very large amounts of survey data (leading to the eventual decision to create a formal database and employ statistical analysis) all contributed to the length of time between the survey and the in-depth interview phases of the project. See also: comment above n 59.
This was in strong contrast to men, where only two of the possible 32 male interviewees were unable to be located. In the following Table 2.2, I have summarised the original number of possible interview participants in the survey group, those that had moved out of the private profession, and those that could not be located. The Table shows the remaining ‘potential pool’ of interviewees and the numbers I actually interviewed –

**Table 2.2: Potential interviewees (survey group)**

<table>
<thead>
<tr>
<th>Sex of participants</th>
<th>Total to express interest in interview</th>
<th>Minus those moved to government</th>
<th>Minus those moved to in-house/corporate</th>
<th>Minus those could not locate</th>
<th>Other</th>
<th>Potential pool interviewees</th>
<th>Number interviewed</th>
<th>Percentage interviewed from available pool</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>51</td>
<td>3</td>
<td>4</td>
<td>161</td>
<td></td>
<td>28</td>
<td>20</td>
<td>71.43%</td>
</tr>
<tr>
<td>Male</td>
<td>32</td>
<td>1</td>
<td>22</td>
<td>13</td>
<td></td>
<td>28</td>
<td>9</td>
<td>32.14%</td>
</tr>
</tbody>
</table>

Table Notes:
1. The location of these sixteen women was unknown as they were not listed on the Law Society public database. Possible explanations: left private practice for other areas of law (the fact seven other women had moved into government or corporate fields is a cogent reminder that women do leave for other endeavours); moved to non-legal areas of employment; moved out of workforce; stayed in private legal practice but under other name; changed name but no cross listing/reference system available on database; moved interstate or overseas; or some combination/s of these.
2. Only one male solicitor could not be located on the database; a second was listed but without any current contact address (he had retired).
3. This solicitor had completed the section for follow-up interview, but had also commented on the survey he was not seeking further involvement. He was removed from list of potential interviewees.

Where women have left private practice, I argue their views are potentially of vital significance to understanding women’s retention rates and experiences of legal practice, and I will discuss this in more detail in Chapter 3.

I also wanted to ensure data from both surveys and interviews would fit with the overall Queensland context of the profession, and to this end I undertook additional interviews74 with solicitors who held, or had held, positions on the Law Society Council or Committees or as Society staff. Some of these may have completed an initial survey by virtue of their random selection in the survey phase. Ten such

74 I completed 36 interviews – 26 in the ‘survey’ group and 10 in the ‘stakeholder’ group, with almost every interview extending well over one hour, and a few close to two hours, generating more than 900 pages of interview transcripts.
interviews were conducted, with participants in the stakeholder group being selected by purposive sampling.\textsuperscript{75}

The next Table 2.3 summarises details of all participants in the interview phase of the research.\textsuperscript{76} It includes survey and stakeholder groups, and shows interviewees by sex, position, age and location. I interviewed more women than men because the survey findings supported my original hypothesis that women within the profession experienced more difficulties than did men.

Collectively, these interviewees held, or had held, the full range of possible roles within private legal practice: partners and principals, sole practitioners, senior associates and associates, employed solicitors, and other designations such as consultants and senior counsel. Female interviewees included one part-time partner, two part-time employed solicitors, and two part-time ‘other’ positions (e.g. consultant). None of the male interviewees were part-time, although two men spoke of their desire to achieve that status in their ultimate career plans.

The interviewees represented a wide range of practice areas,\textsuperscript{77} which proved useful when they commented on the possibilities of workplace flexibility. Their workplaces encompassed multinational and national firms, various sized (large, medium and small) capital city and regional city firms, as well as practices in rural locations. At least one practitioner ran a successful practice from their home. Some interviewees also had extensive experience in legal roles with government, academia and private

\textsuperscript{75} This group was chosen based on input and advice from other practitioners, and/or my own knowledge, and in keeping with the aims of the research. Some participants were known to me, some were not. See: Babbie, Earl, \textit{Survey Research Methods} (2\textsuperscript{nd} ed 1990) 97, 373.

\textsuperscript{76} I had not anticipated the strong survey response rate or the extraordinary generosity of interview participants that was to generate more than 900 pages of transcript material. This has been another driver in limiting the thesis analysis and discussion to the three key areas I have outlined (discrimination, flexibility and success). Some issues have lost currency (such as the availability of non-smoking workplace policies). Others had gained a wider professional acceptance since the survey was carried out (e.g. the broad acceptance of the value of alternative dispute resolution). Other issues from the survey and interviews are discussed, but in a less targeted way. I plan to continue to mine the rich research data in subsequent analyses and publications, some in collaboration with other colleagues.

\textsuperscript{77} Described by participants as: general commercial, banking and finance, transactional, estates and probate, personal injuries, criminal, civil litigation, family, industrial, mining and resources, health, workplace health and safety, labour, and administrative law. Flexibility is the focus of Chapter 5, and for individual views on flexible possibilities see: \textbf{Appendix 12}. 
industry, which allowed them to bring other angles of view to the private profession. The youngest interviewee had just turned 30, the oldest was in the 60 and above age grouping.

**Table 2.3: Solicitors who participated in research interviews**

<table>
<thead>
<tr>
<th>Interviewees</th>
<th>Stakeholder group</th>
<th>Survey group</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Female</td>
<td>Male</td>
</tr>
<tr>
<td><strong>Position</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>partner/principal</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>employed solicitor</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>other</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20s</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>30s</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>40s</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>50s</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>60s</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td><strong>Location</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>metropolitan</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>regional</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total interviews = 36</strong></td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td><strong>Stakeholder group</strong></td>
<td>10</td>
<td></td>
</tr>
<tr>
<td><strong>Survey group</strong></td>
<td>26</td>
<td></td>
</tr>
</tbody>
</table>

As I have indicated, the stakeholder interview group was included to ensure there was input from the perspective of solicitors who either worked in a variety of staff or management roles for the Queensland Law Society; or, who served the profession by performing various Council or committee roles. It transpired that some in the survey group also had past or current experience in a range of Law Society roles. This meant the research had the benefit of interview input from a number of solicitors who had former or current experience as Society presidents, Council members or candidates for Council membership, a diverse range of committee chairs and members, and senior managers representing a number of past or present Society staff roles and responsibilities.
I constantly challenged and re-viewed the interview process as that research phase unfolded.78 My research interview focus encompassed three important aspects: context, experience, and meaning. These were valuable touchstones for me to revisit throughout the research.79 Other powerful benchmarks of the success of the interview process were: the very real commitment of participants to make, and meet, interview times; their extraordinary generosity with time and ideas; their good humour and frequent outbursts of laughter; their unfailing courtesy towards me; their almost unanimous refusal of an opportunity to review or revise interview transcripts,80 and their avowed and ongoing interest in the project.

The interviews explored some specific issues that emerged from the survey, but they also allowed for a more in-depth focus on individual difficulties participants had experienced, while teasing out issues related to the ‘universality’ or otherwise of such experiences and difficulties. They allowed participants to contribute ideas about the response of the professional peak body, the Queensland Law Society, to a range of

78 Within the project parameters, I retained a commitment to being open to any new possibilities of form and space that the participants themselves initiated or sought. Scheurich (above n 6, 61) offers a robust critique of ‘conventional interviewing’ and the modernist position on this method. Describing it as a research method that can be ‘artificially separated’ into the ‘doing’ and the ‘interpreting’, he dismisses a ‘conventional or positivist perspective’ as it ‘vastly underestimates the complexity, uniqueness and indeterminateness of each one-to-one human interaction’ (64), and suggests that the “‘wild profusion” that occurs moment to moment in an interview is ... ultimately indeterminate and indescribable’ (67). Nor does Scheurich accept that the ‘profusion’ can be ‘tamed’ by empowering the interviewee, pointing out an inherent ‘paternalism’ in the interviewer ‘giving’ power to the interviewee. Scheurich urges a critical rethinking of how researchers ‘report’ or ‘represent’ results 73). A mere re-naming of the process (perhaps as conversation, interaction, narrative) is clearly insufficient to resolve the dilemmas he has exposed. What is required is openness to the ‘interpretative moment’. I consider the underlying, and key, response is an acknowledgement and acceptance of these dilemmas, while working respectfully, as an equal, with research participants.

79 Seidman, above n 11, 10-13. Ideally, Seidman proposes a ‘three-interview series’: an in-depth phenomenological interviewing model that uses a first interview to establish ‘the context of the participants’ experience. The second allows participants to reconstruct the details of their experience within the context ... And the third encourages the participants to reflect on the meaning their experience holds for them’ (underlining mine).

80 Only three of the 36 interviewees opted to review their interview transcript (one did it solely on the basis that it might allow them to expand responses and that would be ‘more helpful.’) Only one woman among the prospective interviewees in the stakeholder group failed to return calls or offer an interview time after her initial agreement to participate. One prospective male participant in the stakeholder group declined to be involved after he received advance copies of the Information Sheet and Consent Form. Substitute participants (one woman and one man) were approached successfully to complete the stakeholder group interviews. In the survey group (all self nominated volunteers) only one participant (a woman) showed some reluctance to be part of the interview process, although she resisted any suggestion that she might prefer not to participate. Only one man among the total of ten male interview participants strove to position himself as ‘heterosexual, powerful and knowledgeable’ in the ways Barbara Pini encountered during interviews with male leaders in an Australian agribusiness sector. For critical and reflexive practices in these circumstances see: Pini, Barbara, ‘Interviewing men – Gender and the collection of qualitative data’ (2005) 41 (2) Journal of Sociology 201.
issues and to offer suggestions about what other responses might be possible or desirable. Where individual participants had experience, ideas or knowledge about management practices or approaches, they were invited to share their ideas within the context of the research project to highlight the potential nexus between workplace experiences and contemporary human resource management issues within the legal profession.

2.4.5 LITERATURE REVIEW

The literature that informs this research is not restricted to academic or professional materials. I accept that ‘[p]opular discourse has a powerful effect on people’s attitudes and behaviours, and as such forms an important context for the analysis of individuals’ work and family arrangements’.81 Not only can popular literature, self-improvement texts, media reports, magazine coverage and market surveys accurately reflect community expectations and aspirations, but they can also generate debate about these issues in the legal and broader communities. Some authors have even suggested that popular lifestyle literature can offer more than ‘academic and policy literature relating to the legal profession’ as the latter is largely focussed on women who combine career and parenthood, while the former has looked at the ‘position and roles of both women and men in the work and family equation’.82

The literature review was partially undertaken during the preliminary thinking and ‘clarifying’ phase,83 and expanded and developed as the research progressed. It engages with both traditional literature and documents and materials issued by the Queensland Law Society and includes annual reports, journals, newsletters and magazines, policies, guidelines and ethical rulings, reports on disciplinary action, practice management and educational materials; as well as materials published by individual legal practices, and by or about the wider profession, both in Australia and overseas. It also encompasses online materials,

The literature review process is a key method adopted for this project. Whereas an

82 Ibid, 5. Hearn and Parkin also argue cogently for the value of these sources as diverse and having ‘meaning and significance at a number of levels’ – see Hearn and Parkin, above n 56, 38-39.
83 Maxwell, above n 37.
examination of discursive practices might be exemplified by what is missing, as much as by what is included, I list the literature review in its mainstream and traditional sense, including particularly the published research and commentary on solicitors, on women in legal practice, and a range of management sources. It has a vital role in locating the research work within a context, both within its theoretical perspective or framework as well as positioning it in terms of the existing research involving lawyers.84

Various legal profession equity committees, at national Law Council level and in different States, publish bibliographies of materials relevant to women in the legal profession. In line with the feminist commitment inherent in this project, and responding to the call from Reinharz and others to make research accessible to those participating in it, I have extracted from my final thesis bibliography all reference materials related to the law and the legal profession, and particularly women’s role within that profession. This specialist ‘bibliography’ appears as Appendix 17, and will hopefully facilitate further enquiry and research.

Traditionally, a literature review was contained within a single thesis chapter,85 but there is now considerably more variety in the ways in which researchers incorporate this material. I welcomed the opportunity to adopt a more literary style of presentation;86 and I see much of the literature review material as building blocks to be woven into the thesis throughout the work,87 thus enhancing the focus that can be brought to bear on certain issues and highlighting comparisons and contrasts within the research data. I argue the rationale for this approach is strengthened by the

84 A commentary or discussion on the use of the literature review is routinely found in texts on research methodology and methods. For example: Maxwell, above n 37; Neuman, above n 4; Reinharz, above n 4; Hart, Chris, Doing a Literature Review – Releasing the Social Science Imagination (1998). Neuman, above n 4, 89, teases out as many as six types of review, but significantly ascribes four central goals: (i) to demonstrate familiarity (and competence) with a body of knowledge, (ii) to explore prior research and its link with the current project, (iii) to integrate and summarise what is known, and (iv) to learn from others and stimulate new ideas. Reinharz (above n 4, 150) describes the method as summarising ‘the salient findings of pertinent studies’ and questioning the assumptions embedded in the paradigms that underpin those studies.


86 As opposed to a more traditional formulaic writing style – see: Rosenau, above n 6, 8: who cautioned that a ‘post-modern emphasis on style does not signify an absence of concern with content’

Diagram I developed in Chapter 1\textsuperscript{88} that illustrates the complex web of influences and disciplines at play in and on the lives of lawyers.

2.4.6 EXAMINATION OF DISCURSIVE PRACTICES

What I was seeking to achieve from this angle of ‘view’ was more than a literature review. I wanted to move beyond a merely formalistic content analysis of various documents and materials.\textsuperscript{89} I resiled from describing this particular research method as ‘discourse analysis’ even though competing theories and definitions of discourse would allow me to mount an argument that such a description was valid.\textsuperscript{90} I wanted to engage with the informal as well as the formal within legal organisations and among lawyers themselves, and to cross disciplinary boundaries where appropriate or necessary. While a range of legal publications was relevant, so too were dress codes (formal and informal), language used by lawyers, in-house office jokes,\textsuperscript{91} the artefacts that adorn legal workplaces,\textsuperscript{92} tactics employed by solicitors in adversarial settings, 

88 See: Chapter 1, Section 1.5 Aims and Purposes, p 1-15, esp Diagram 1.1: Queensland solicitors – influences on and angles of view, p 1-19.

89 Some commentators have a very positivist take on content analysis, requiring ‘objective and systematic counting and recording procedures to produce a quantitative description of the symbolic content in a text’ (Neuman, above n 4, 273). This contrasts with a feminist denial of a ‘terminological consensus for the method …’ and including ‘discourse analysis, rhetoric analysis, and deconstruction’ as ‘additional terms that refer to the examination of texts”’(Reinharz, above n 4, 148).


92 During my time in private legal practice, I visited various legal offices throughout the State and observed that a number of firms prominently displayed sporting memorabilia in reception areas, hallways and meeting rooms. For example, there were framed full size football jerseys and various cricketing items. Many of these items were acquired at charity auctions, but they also give a strong message about the possible interests and attitudes of those who run the firms, and may be effective in curtailing the numbers of potential applicants who are seeking to work within them. The Law Society has regularly advertised legal education seminars and conferences to coincide with sporting fixtures (particularly football) and promoted this as a leading advantage/selling point to practitioners.
web sites, blogs (or blawgs\textsuperscript{93}), videos, media statements and reports, choices of meeting or conference venues, and so forth – with the omitted as potentially significant as the included, and with all material ‘read as material constructed in a cultural context’.\textsuperscript{94} I sought to unpack discursive practices as and when they appeared, and see what they did or could reveal about the nature of the Queensland legal profession. As one commentator said, ‘in order to develop strategies to contest hegemonic assumptions and the social practices which they guarantee, we need to understand the intricate network of discourses, [and] the sites where they are articulated’ as well as ‘the institutionally legitimised forms of knowledge to which they look for justification’.\textsuperscript{95}

Language is vital to an understanding of how and why the society of solicitors is constituted as it is, and has acquired the various meanings that it has for both insider inhabitants and outside observers. But language is only one example of the range of discursive practices that can create ideologies and communities that benefit some at the expense of others.\textsuperscript{96} I argue discursive practices work to actually ‘construct’ the reality of the solicitors’ world rather than disclosing or revealing it in all its manifestations. Jeff Hearn wrote powerfully of men and men’s sexuality within the organisational setting – ‘practices, like gazes and laughs and sneers, may appear innocuous, even innocent, but that apparent ‘naivety’ is itself part of [men’s] “ordinary” (male) power’.\textsuperscript{97}

\textsuperscript{93} See, for example: <anonymouslawyer.com>; <http://www.101reasonstokillallthelawyers.com/>; for a directory of some Australian blawgs see: <http://www.djacobson.com/australian_law_blogs/>

\textsuperscript{94} See: Kantola, Johanna, “‘Why Do all the Women Disappear?’ Gendering Processes in a Political Science Department’ 2008) 15 (2) Gender, Work and Organization 202, 204.

\textsuperscript{95} Chris Weedon, Feminist Practice and Poststructuralist Theory (1987) 126. On what is ‘omitted’ or missing see: Editors (Financial Review) ‘Best Lawyers Australia’, Australian Financial Review (Melbourne), 6 March 2009, supplement. The full-page cover illustration shows a stylised picture of four lawyers racing down a track towards the finish. All four appear to be male (in suits and ties). It is possible that one figure is meant to be female, and this lawyer is running last.

\textsuperscript{96} Phillips, N and Hardy, C, Discourse Analysis: Investigating Theories of Social Construction (2002) 12-13. One striking example was the revelatory moment for one interview participant when he spontaneously noticed, and ruefully acknowledged, the military turn of phrase he regularly used to describe his troops and the aggressive combative environment in which law can be conducted: ‘You’re faced with the challenge from the other camp … and the strategy that’s implemented is combative and tactical – it’s almost warfare driven. And the language … not to beat around the bush – expressions like “let’s fuck ‘em” or “go for the throat” or “let’s get them” – I(m)36: 5,9 [man – 40s – principal – metropolitan]. This participant was not alone in his militaristic language or approach to contested matters, and he was forthright about the potential that this atmosphere of aggression had for disaffecting and isolating some members of the profession.

\textsuperscript{97} See: Hearn and Parkin, above n 56, 157.
My search for embedded discourses and discursive practices within the solicitors’ branch of the legal profession was designed to add additional layers of understanding to the daily lives of lawyers and the ways in which they articulate and manage their private and legal worlds.\textsuperscript{98} I refer to various discursive practices throughout the thesis, often as a footnote or by way of a backdrop to the lives of lawyers. They also assist me to pursue one of my research purposes\textsuperscript{99} – to understand the gendered experience of legal professional culture in solicitors’ lives.

\textbf{2.4.7 FEEDBACK}

In accordance with the requirements of the project’s ethical clearance, some feedback to participants was provided through conference papers and a number of articles in the Queensland Law Society magazine. Individual feedback about the findings was forwarded to those participants who made a specific request upon the completion of the survey instrument or the completion of the interview. Although there is scant mention of feedback in the myriad of texts on research methods, it forms an integral part of research design and of the feminist commitment to work ‘with’ participants.


Similarly, it is beyond the scope of the thesis to explore the ramifications of language as power (see: Travers, Max, ‘Understanding Talk in Legal Settings: What Law and Society Studies can Learn from a Conversation Analyst’ (2006) 31 (2) \textit{Law & Social Inquiry} 447; Conley, John M, ‘Comment – Power is as Power Does’ (2006) 31 (2) \textit{Law & Social Inquiry} 467); or to understand and explore fully the gendered nature of discourse and how women and men enact professional authority where their starting point is that workplace norms are masculine norms (see: Wodak, Ruth (ed), \textit{Gender and Discourse} (1997); Kendall, Shari and Tannen, Deborah, ‘Gender and Language in the Workplace’ in Wodak, Ruth (ed), \textit{Gender and Discourse} (1997) 81; Tannen, Deborah, \textit{Gender and Discourse} (1996); Garnsey, Elizabeth & Rees, Bronwen, ‘Discourse and Enactment: Gender Inequality in Text and Context’ (1996) 49 (8) \textit{Human Relations} 1041; Fraser, Nancy, \textit{Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory} (1989)); or to see the exclusionary effects of discourse in all its organisational manifestations (see: Bendl, Regine, ‘Gender Subtexts – Reproduction of Exclusion in Organizational Discourse’ (2008) 19 \textit{British Journal of Management} S50).

\footnotesize{\textsuperscript{99} Refer Chapter 1, Section 1.5 Aims and Purposes, p 1-15. This method also relates to the subsidiary research questions about legal workplace culture and legal workplace experiences.}
rather than to conduct research ‘on’ them.

The provision of feedback also allowed the project to remain ‘alive’ in the minds of solicitors and other potential stakeholders such as Law Society staff; and often contributed to those serendipitous research moments where someone, motivated by a piece they may have read in a Law Society magazine, or heard at a conference presentation, contacted me with details of possible participants or of a researcher working in a similar field, or with a reference to some book or journal, and perhaps most importantly, encouragement and support to continue the project. The thesis project itself has the potential to give feedback through professional and academic libraries and research networks.  

2.5 METHODS AND QUESTIONS

By way of summary, I have depicted in the following Table 2.4 the ‘fit’ between the research methods, strategies and techniques that I have detailed and the research questions I outlined in Chapter 1. The Table shows how the central research question is approached by way of addressing and exploring the individual or subsidiary research questions that I have posed. As the Table illustrates, all of the individual questions are addressed, viewed, or crystallised through more than one single method or vantage point. Each phase or aspect of the research was conducted within a feminist commitment to ethical, collaborative and reflexive research practices.

\[100\] See above n 21.
Table 2.4: Research methods tied to research questions.

<table>
<thead>
<tr>
<th>SUBSIDIARY RESEARCH QUESTION/S</th>
<th>VARIOUS RESEARCH METHODS/APPROACHES/STRATEGIES USED TO INVESTIGATE ‘WHAT IS THE EXTENT OF PREJUDICE AND BIAS WITHIN THE SOLICITORS’ BRANCH OF THE QUEENSLAND LEGAL PROFESSION?’</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Did women inside Qld legal professional culture report more difficulties than lawyers elsewhere? than men?</td>
<td>4</td>
</tr>
<tr>
<td>3. Were experiences of Qld women universal or different for different individuals?</td>
<td>4</td>
</tr>
<tr>
<td>4. Where difficulties were perceived, what was Qld Law Soc response?</td>
<td></td>
</tr>
<tr>
<td>6. What was the relationship of legal workplace experience to contemporary human resource management?</td>
<td></td>
</tr>
</tbody>
</table>

2.6 CONCLUSION

In this Chapter, I have set out my rationale for adopting a feminist framework inside which the multi-method research has been conducted. I see a feminist approach as an effective way to acknowledge and challenge biases and assumptions. It guides the management of voice and multiple selves of both researcher and participants. It recognises different standpoints and sounds a warning against straying into essentialism. It values ethical, self-reflective and collaborative practices.
I have argued the advantages of multi-method research generally, and in particular for this doctoral research. The seven research strategies I utilised in my research project crystallise data from a variety of angles, bring together different aspects of issues under investigation, open up fresh perspectives, use initial findings to inform later stages of the work, and generate a richness of data that adds breadth and scope to the research. I have summarised how the various research questions that were detailed in Chapter 1 are addressed by these individual research strategies or combinations of them.

In the following Chapter 3, I introduce in detail my research sample and its continuing currency and relevance to the solicitors’ branch of the Queensland profession. It considers why the women and men in my research chose to become solicitors, and it questions why so many women vanish from their chosen profession. The Chapter also provides a brief introduction to the traditional culture of the legal profession.

Chapter 3 reviews a broader jurisdictional background for the research through a focus on my three principal areas of research interest (discrimination, workplace flexibility and success), teasing out similar themes that resonate across State boundaries. It also examines similar findings in a number of overseas jurisdictions. It brings into comparative focus what is happening within the Queensland profession in terms of research, policy and practice guidelines, and a professional commitment to gender equity and the advancement of women in its ranks.
# CHAPTER 3. QUEENSLAND SOLICITORS IN CONTEXT

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<td>3.10 Conclusion</td>
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CHAPTER 3. QUEENSLAND SOLICITORS IN CONTEXT

‘There may be no setting more significant than the legal profession for observing the advances and setbacks that women today are experiencing in a changing world ... Lawyers are often powerful players in the organization of social, economic, and political life ...’
> Hagan & Kay 1995

This work is very important in Queensland ... I think we probably are different from the other States. I just think it’s very valuable research.
> woman – 40s – formerly private practice – now senior government solicitor

3.1 INTRODUCTION

This Chapter introduces my survey participants within the broader context of women and men who practise as solicitors within the private legal profession in Queensland. It interrogates demographic data about the research participants, and it compares my data with historical data from Queensland Law Society records to establish the representative nature of the research sample,

The Chapter shows women: comprise less than 50 percent of Queensland solicitors; are poorly represented in professional governance; are far less likely than their male colleagues to achieve private practice partnership or principal status: and are leaving the profession in greater numbers than do men. The Chapter sounds an alarm about the numbers of solicitors who leave the profession, particularly the women, and points out that very little is known about the reasons women or men leave.

The Chapter considers numbers leaving the solicitors’ branch of the Queensland legal profession, but also reviews survey data to ascertain why women and men choose to become lawyers in the first place. Survey findings show that similar reasons motivate

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2 If(77: 17 (emphasis hers) (interview conducted 2005).
3 Re women who ‘disappeared’ from the Queensland Law Society database between the inception of the research (in 1999) and the project’s interview phase (completed over the 2005-06 period) – see: Chapter 2, Sub-Section 2.2.4 Semi-Structured Interviews, p 2-15, esp Table 2.2: Potential interviewees (survey group), p 2-16.
both sexes towards law. Flexibility ranks poorly on the list of reasons to become a lawyer, reflecting the incompatibility of flexibility and the high pressure and unrelenting nature of solicitors’ work.

This Chapter gives an introductory view of the traditional culture that still prevails in parts of the Queensland profession, thus providing a basis for the consideration of cultural and attitudinal barriers at subsequent stages of the thesis. It asks whether considerable efforts to break down barriers to equality of participation will be enough within a prevailing culture that sees men claim a ‘right of property’ in the profession, and where women may be admitted on limited terms.

The Chapter also provides an overview of women within the legal profession by reviewing research findings about women lawyers within the various State jurisdictions, and in some overseas jurisdictions. This focuses on my key research areas of discrimination, flexibility and success.

In the following Section, I consider the demographic particulars of the women and men who participated in the survey phase of the research.

3.2 A SNAPSHOT OF THE QUEENSLAND PROFESSION

As I outlined in Chapter 2, I sent anonymous survey instruments to 550 Queensland solicitors. Background information about participants was elicited from the first group of questions on the survey. I have split demographic information into two groupings that can broadly be seen as relating to the solicitors’ work and non-work worlds. The first grouping is collated in Table 3.1 below and looks at participant age, legal workplace size, workplace location, position held in legal practice, and year the solicitor was admitted to practice (referred to as seniority).

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4 Refer: Chapter 6, Section 6.9 Staying in the Main Game, p 6-33, at p 6-35 n 136.
5 See: Chapter 2, Sub-Section 2.4.1 Survey, p 2-10ff; also: survey instrument at Appendix 2. The survey phase was conducted in 1999-2000. Of the valid returned survey instruments, 110 were from women and 96 were from men.
6 Demographics from Survey Q1 through to Q7. Specifically age, workplace size, geographic location, position held, seniority, background (parental occupation/s, schooling, prior employment, current tertiary study/ies) and whether or not participants had children.
As between women and men, each key demographic measure in Table 3.1 is statistically significant: women are far more likely to be younger; to work within larger, as well as within metropolitan rather than regional, firms; to be employees rather than partners or principals; and to have far fewer years seniority, than do their male colleagues.\footnote{Age Mann-Whitney (MW)-U=4041.00 Z=-3.727 p=0.000; firm size MW-U=2593.50 Z=-3.531 p=0.000; location MW-U=4183.00 Z=-2.771 p=0.006; position held MW-U=3558.00 Z=-4.780 p=0.000; seniority MW-U=2859.50 Z=-5.584 p=0.000.}

Table 3.1: Q2-Q5 – Demographics (work) of research sample

<table>
<thead>
<tr>
<th>Research Sample Q2-Q5 (work background demographics)</th>
<th>FEMALE</th>
<th>MALE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 - 29</td>
<td>43</td>
<td>39.09</td>
<td>15</td>
</tr>
<tr>
<td>30+</td>
<td>67</td>
<td>60.91</td>
<td>81</td>
</tr>
<tr>
<td>Total</td>
<td>110</td>
<td>100.00</td>
<td>96</td>
</tr>
<tr>
<td><strong>Firm Size</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 - 10 lawyers</td>
<td>40</td>
<td>44.44</td>
<td>57</td>
</tr>
<tr>
<td>11 - 79 lawyers</td>
<td>29</td>
<td>32.22</td>
<td>15</td>
</tr>
<tr>
<td>80+ lawyers</td>
<td>21</td>
<td>23.33</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>90</td>
<td>100.00</td>
<td>80</td>
</tr>
<tr>
<td><strong>Location</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolitan</td>
<td>76</td>
<td>69.09</td>
<td>47</td>
</tr>
<tr>
<td>Rural/Regional</td>
<td>34</td>
<td>30.91</td>
<td>47</td>
</tr>
<tr>
<td>Total</td>
<td>110</td>
<td>100.00</td>
<td>94</td>
</tr>
<tr>
<td><strong>Position</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partner/principal</td>
<td>26</td>
<td>23.64</td>
<td>54</td>
</tr>
<tr>
<td>Employed solicitor/other</td>
<td>84</td>
<td>76.36</td>
<td>42</td>
</tr>
<tr>
<td>Total</td>
<td>110</td>
<td>100.00</td>
<td>96</td>
</tr>
<tr>
<td><strong>Seniority</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre 1985</td>
<td>17</td>
<td>15.74</td>
<td>46</td>
</tr>
<tr>
<td>1985 - 1994</td>
<td>42</td>
<td>38.89</td>
<td>32</td>
</tr>
<tr>
<td>1995 onwards</td>
<td>49</td>
<td>45.37</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>108</td>
<td>100.00</td>
<td>93</td>
</tr>
</tbody>
</table>

Table Note: Where there are fewer than 110 women or 96 men shown as responding to a question, this means no answer was given by one or more respondents. (In some cases I felt participants avoided answering demographic questions they thought might tend to identify them, an impression confirmed during interviews.)
For some years now there has been a conventional view that women will ‘catch up’ to their male counterparts as more women enter the profession. Almost a decade into the 21st century it is no longer possible to claim that women are pushing through the pipeline. Clearly, the pipeline is leaking. Although women are entering the profession in high numbers, they are not staying to achieve the seniority of years post admission and the equity or ownership stakes in legal businesses that traditionally come with those years of service.

Women remain clustered in the lower age groups and many vanish from the profession. There are no Queensland studies that track these women or seek to understand the reasons they abandon a professional career attained after years of commitment and hard work.

Research participants worked in a variety of firm sizes and structures, from sole practitioners to large Queensland offices situated within national or international firms. Graph 3.1 below illustrates the different distribution of women and men within small, medium, and large legal practices, with women more likely to work in medium or large firms.

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8 See, generally, discussion of this point in: Easteal, Patricia, Less Than Equal – Women in the Australian Legal System (2001) 206ff; also: Lamb, Ainslie and Littrich, John, Lawyers in Australia (2007) 67ff; and: Kirton, Caroline, ‘Has the System Failed Women?’ (Speech to Australian Bar Association Judicial Appointments Forum, Sydney, 27 October 2006) 12, where she endorses then Justice Gaudron’s view that the eventual ‘trickle up’ theory is ‘dishonest’.

9 The pipeline metaphor has been used extensively. For a reference to ‘frozen’ pipeline see: Hardesty, Sarah and Jacobs, Nehama, Success and Betrayal - the crisis of women in corporate America (1986), 221; for ‘leaky’ pipeline see: Franks, Suzanne, Having None of It: Women, Men and the Future of Work (1999), 49; for ‘down the pipeline’ see: Strachan, Glenda and Barrett, Mary, ‘Down the pipeline? Are Women Reaching Senior Positions in Law and Accounting Firms?’ (Paper delivered at 20th ANZAM Conference Management: Pragmatism, Philosophy, Priorities, 2006).

10 Men (71.20%) were more likely than women (44.40%) to report working in smaller firms (1 to 10 lawyers – the blue section). In firms with 11-79 lawyers (the red section), 18.80% of men came from these firms compared with 32.20% of women. 10% of men, and 23.00% of women, were located in firms with 80 plus lawyers (the yellow section). For division into three firm sizes or types, refer: Chapter 2, Sub-Section 2.4.3 Statistical Analysis, p 2-13, at p 2-14 n 65.

One woman was unsure of the total number of lawyers in her firm and indicated a wide numerical range. She subsequently described her workplace as hostile, lonely and competitive (F51(S) at Q23 Which word in each pair best describes your workplace?) Another woman reported a three-figure number of lawyers followed by a question mark and Big! This participant also recorded hostile, lonely and competitive as words to describe her workplace, but at the same time found it could be equitable, exciting and innovative – (F79(S) at Q23). One other woman (F92(S) at Q3) commented on the sheer size of her workplace. She indicated a three-figure number of lawyers approx in the firm’s Queensland office. Only one man (M24(S) at Q3) made comment on the size of his workplace, noting the total number of lawyers as lots.
Throughout this thesis, I examine various findings against a range of demographic factors, including firm size, in order to ascertain whether any of these factors give rise to significant differences between women and men, and within groups of women and groups of men. Nothing in my research suggests firm size is a prime determinant of how women or men are likely to fare within private legal practice in Queensland.¹¹

Firm size may be useful in a structural examination of the profession, but may be irrelevant to systemic issues. Solicitors themselves recognise this, as comments made during interviews illustrated. Individual lawyers from very large firms reported the experience of working there was like working in a very small firm, because work units were discrete and separate, running their own budgets, and with unit members rarely seeing anyone outside their own work group or team. One Brisbane partner stressed the autonomy partnership gave him: I run my own business unit how I see fit.¹² One of his partners (in another section of the firm) issued a capability statement advertising a 24-hour availability to clients. The research participant explained he rejected a similar statement for his own section. He utilised computer software to

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¹¹ Some of my research participants suggested women may be attracted to larger firms because many of these firms advertise ‘family friendly’ policies. However, women I interviewed from larger firms were as likely as women from small firms to be critical of their firm’s ‘poor performance’ in the family friendly and flexibility stakes. This is an area that needs targeted research to determine whether Queensland firm size has any direct affect on women, or men’s, experiences of legal practice.

¹² I(m)36: 2 [man – 40s – partner – metropolitan].
prevent his unit’s employed solicitors sending emails to clients late at night or in the
early hours of the morning. He modelled flexibility and a work and life balance to his
team. But, he acknowledged members of other groups within the same firm would
have different stories to tell.

A woman who worked in a very large firm in Brisbane had extremely flexible work
arrangements, but revealed she did not personally know the lawyers in the next
corridor.13 Her arrangements were totally dependent on the fact that one partner, who
headed the work cell, was prepared to work in a particular way. If the solicitor moved
around the corner, to another floor, to another work group or cell, there was no whole
of firm policy (or uniformity of practice among partners) that would guarantee any of
her flexible work practices would continue.

One senior practitioner in a multinational firm spoke of the efforts taken to ensure
uniformity of management and policy, but conceded there are odd practices that
grow up in some sections.14 Another practitioner who had worked in a number of
different size firms suggested it was not worthwhile to try and draw comparisons
because there are too many factors15 involved in the individual experiences of a
solicitor in any given workplace.16

For women, there may be no deliberate ‘preference’ or reason to choose larger firms,

---

13 (f)45: various [woman – 40s – part-time employed solicitor – metropolitan].
14 (m)78: 8 [man – 50s – senior partner – national firm].
15 (f)46: 9 [woman – 30s – senior associate – metropolitan]. However, some solicitors did refer to
broad cultural differences between large and small firms.
16 Rosabeth Kanter also considered organisational size in her influential work on women in
organisations – see: Kanter, Rosabeth Moss, Men and Women of the Corporation (1977). (For
comment on the significance of her work see: Chapter 4, Section 4.5 A Kanterian Legacy, p 4-26ff.)
She found (at 31) that members of the corporation in her major study worked in divisions that were
small enough or independent enough for the people in them to feel they were working for a very small
company. She examined (at 48-49) the need for a degree of trust in the operation of organisations and
how trust was often undermined by uncertainties within and outside an individual workplace. Kanter
found (at 32) the workplace stress many employees experienced was related to their lack or loss of
control over their work. She found (at 49) uncertainties lead to closing of ranks (‘the exclusion of
social strangers’), and to a need to both ‘keep control in the hands of socially homogenous peers’ so
that ‘conformity’ is stressed, and to an avoidance of ‘dealing with people who are “different”’. Kanter
argued (at 43) these issues are not specific to workplaces of a particular size, rather that: the principles
underlying patterns of behaviour … are more widespread and more universal. The issues, the
processes, the structural dilemmas, and the concerns of the people illuminate aspects of behavior in
organizations that are shared by all large corporations and, in many ways, by modern organizations in
general, whether economic, educational, political, or service systems.
beyond a preference to live and work in larger urban centres, where larger firms are located. Geographic location was one aspect of the demographic data elicited in my survey. In addition to workplace size, participants were asked to denote the location of their workplaces by postcode. Postcodes were grouped into metropolitan and regional (including more rural and remote locations). Equal numbers of men reported working in metropolitan and in rural/regional areas, whereas 69.09 percent of women participants reported working in metropolitan areas.

The survey also asked participants to indicate the position they held within their legal firm as partner or principal, employed solicitor, or ‘other’ (perhaps, for example, a consultant); and to show the year of their admission to practise as a solicitor (a measure of seniority within the profession). As Table 3.1 above set out, men were significantly more likely (56.25 percent) to report holding a partnership or principal role within their firm than were their female colleagues (23.64 percent). There was also a striking difference in the reporting of ‘seniority’ or number of years since admission (49.46 percent of the men were admitted in or before 1984, while only 15.64 percent of women had been admitted in or before 1984).

The demographic data obtained from survey participants also encompassed aspects of their personal background. These particular data are fully set out in Appendix 5. But, I make reference here to the number of survey participants who reported having children – 30.56 percent of women and 64.58 percent of men reported they did have children. Women were less likely to have children than were their male colleagues, and where women or men had children these practitioners were more likely to be based in regional than in metropolitan locations.

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18 See: Table 3.1: Q2 to Q5 – Demographics (work) of research sample, p 3-3. Also see: above n 7 for statistical tests of significance.

19 In the five years (1995 to 1999) prior to the issue of the survey there appeared to be a surge in numbers of women admitted – 49 women recorded being admitted in these years compared to 19 men.

20 Specifically whether they had a professional mother or father, whether or not they had attended a private school for at least a part of their education, whether they had a prior career before becoming a solicitor, whether or not they were undertaking any current tertiary studies, and whether they had children. See: Appendix 5.
Graph 3.2 below\textsuperscript{21} summarises the presence of children by both sex and location of survey participants, with blue sections indicating those practitioners with children and red those who do not have children.

**Graph 3.2: Presence of children by sex and location of firm**

![Graph 3.2: Presence of children by sex and location of firm](image)

The presence of children by sex and position held within the firm is summarised in Graph 3.3 on the following page.\textsuperscript{22} Partners or principals are more likely to have children, and I suggest this is partly a function of age. But, for women it is perhaps also a function of having more confidence and security in one’s position within the firm. What is striking about these data is the fact that male solicitors generally are more likely to have children than are their female counterparts, and I will return to question of women ‘sacrificing’ children for career in Chapter 4.\textsuperscript{23}

\textsuperscript{21} The Graph 3.2 is based on the following – *Yes Children* Female: metropolitan N=15, 20.00%; regional N=18, 54.55%; Male: metropolitan N=25, 53.19%; regional N=35, 74.47%; *No Children* Female: metropolitan N=60, 80.00%; regional N=15, 45.45%; Male: metropolitan N=22, 46.81%, regional N=12, 25.53%.

\textsuperscript{22} The Graph 3.3 is based on the following – *Yes Children* Female: partner/principal N=9, 36.00%; employed solicitor/other N=24, 28.92%; Male: partner/principal N=45, 83.33%; employed solicitor/other N=17, 40.48%; *No Children* Female: partner/principal N=16, 64.00%; employed solicitor/other N=59, 71.08%; Male: partner/principal N=9, 16.67%; employed solicitor/other N=25, 59.52%.

\textsuperscript{23} See: Chapter 4, Section 4.6 Family or Firmily? p 4-33ff.
I now turn briefly to demographic data from the Queensland Law Society to see how my research sample ‘fits’ with the actual population of solicitors at the time I undertook the survey stage of the research and five years later when research interviews commenced.

### 3.3 COMPARISON WITH BROADER PICTURE

I requested some de-identified demographic data from Queensland Law Society records to compare to my sample. The Law Society data relates to two periods: in 2000 which was the time my research participants were completing and returning survey instruments, and five years later in 2005 when the interview stage commenced. The data supplied relates to the age of practitioners, their geographic locations, and the position held – measures which could be readily compared to my own data. The comparison between the profession’s official figures and my survey sample is set out in the following Table 3.2. Overall, the figures demonstrate my research sample was representative of the general population of Queensland solicitors.
Table 3.2: Comparison of research sample and law society data

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20-29</td>
<td>43.25%</td>
<td>40.51%</td>
<td>39.10%</td>
<td>15.05%</td>
<td>13.09%</td>
<td>15.60%</td>
</tr>
<tr>
<td>30+</td>
<td>56.77%</td>
<td>59.49%</td>
<td>60.90%</td>
<td>84.95%</td>
<td>86.91%</td>
<td>84.40%</td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
</tr>
<tr>
<td>Location</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolitan</td>
<td>66.90%</td>
<td>71.00%</td>
<td>69.10%</td>
<td>59.40%</td>
<td>61.80%</td>
<td>50.00%</td>
</tr>
<tr>
<td>Regional</td>
<td>33.10%</td>
<td>29.00%</td>
<td>30.90%</td>
<td>40.60%</td>
<td>38.20%</td>
<td>50.00%</td>
</tr>
<tr>
<td>Total</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
<tr>
<td>Position</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partner/principal</td>
<td>19.81%</td>
<td>14.91%</td>
<td>23.64%</td>
<td>58.93%</td>
<td>56.63%</td>
<td>56.25%</td>
</tr>
<tr>
<td>Employed/other</td>
<td>80.19%</td>
<td>85.09%</td>
<td>76.36%</td>
<td>41.07%</td>
<td>43.37%</td>
<td>43.75%</td>
</tr>
<tr>
<td>Total</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

At both points in time there is a good ‘fit’ as to age of female and male practitioners. There is a similar alignment with the figures for location for women, although Law Society data suggest my sample may under-represent metropolitan and over-represent regional men.24

The research survey data for position held within a firm are also a good match with Law Society data for men at both points. My female survey participants were more likely to be partners or principals than was the case in the general population of Queensland solicitors. This has provided an opportunity to hear the voices of more women who have navigated through the ranks of private practice and achieved principal status.

Law Society data show fewer women held principal roles in private legal practice in 2005 than they had done five year earlier.25 To ascertain whether this might be an indicator of women leaving the profession, I also requested information about the

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24 The Society uses some different categories, and to line up with my metropolitan-regional split I have added the QLS categories of Brisbane City, Brisbane North Suburbs and Brisbane South Suburbs (information supplied by QLS staff by email May 2005) to create a metropolitan group, with the balance classed as regional.

25 I combined the Society categories for Partner, Managing Partner and Sole Practitioner to equate to my partner/principal category, with the total of any other categories matching my employed solicitor/other. (Information from QLS staff May 2005.) It may be that overall women are exhibiting a reluctance to take on equity partnerships and this is a theme to which I return later in the thesis.
number of new (as in additional) principal/partnership practising certificates issued in a 12-month period; and also the number of practising certificates that were not renewed, as this is a measure of numbers leaving the profession. The figures show that the number of women entering partnership or ownership ranks each year is moving up towards 30 percent of the new principal certificates issued and this information is summarised in Table 3.3 below –

Table 3.3: Issue of new principal practising certificates

<table>
<thead>
<tr>
<th>New principal/partnership practising certificates issued</th>
<th>FEMALE</th>
<th>MALE</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>2006/07</td>
<td>45</td>
<td>22.50</td>
<td>155</td>
</tr>
<tr>
<td>2007/08</td>
<td>56</td>
<td>28.14</td>
<td>143</td>
</tr>
</tbody>
</table>

However, when we look at the total numbers of solicitors who do not renew practising certificates for the same two annual periods, it is clear that the pipeline for women continues to leak, with women more likely than their male counterparts to be exiting the profession. Table 3.4 below sets out these data, which also reflect the fact that there are significant numbers of women and men who do not renew their practising certificates.

Table 3.4: Non-renewal of all practising certificates

<table>
<thead>
<tr>
<th>Total practising certificates not renewed</th>
<th>FEMALE</th>
<th>MALE</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>2006/07</td>
<td>387</td>
<td>53.23</td>
<td>340</td>
</tr>
<tr>
<td>2007/08</td>
<td>488</td>
<td>54.65</td>
<td>405</td>
</tr>
</tbody>
</table>

In any future research, or professional dialogue, about the retention of solicitors within private practice, solicitors’ reasons to leave the Queensland profession, as well

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26 The most up-to-date information available was for 2007 and 2008. Information supplied by QLS staff by email, 16 September 2008.
27 See: above n 9.
as why they decide to become lawyers, are important. It is to this latter question of why women and men join the ranks of lawyers that I now turn.

3.4 WHY BECOME LAWYERS?
Survey participants were asked why they had decided to become lawyers. Table 3.5 below shows the leading reasons recorded by survey participants. They were asked to indicate reasons that were of the greatest importance or significance to them (noting as many, or as few, as they wished). The Table details the number and percentage of respondents who ranked a particular characteristic highly. The five ‘most popular’ listed reasons for women and for men do differ slightly. The order columns included in the Table provide a ready indicator of the inclusions in the top five for women and men (e.g. 38 percent of women ranked ‘help people’ in their top five, shown as 1 in the females order column; 36 percent of women ranked ‘fascinated by law’, shown as 2 in the order column; and so on).

Table 3.5: Q8 – Leading reasons to become lawyers

<table>
<thead>
<tr>
<th>Q8 Reasons to become lawyer</th>
<th>FEMALES</th>
<th></th>
<th></th>
<th>MALES</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>Order</td>
<td>N</td>
<td>%</td>
<td>Order</td>
</tr>
<tr>
<td>Help people/make a difference</td>
<td>42</td>
<td>38.18</td>
<td>1</td>
<td>29</td>
<td>30.21</td>
<td>4</td>
</tr>
<tr>
<td>Fascinated by law/lawyers</td>
<td>40</td>
<td>36.36</td>
<td>2</td>
<td>34</td>
<td>35.42</td>
<td>2</td>
</tr>
<tr>
<td>School results gave entry to law</td>
<td>38</td>
<td>34.55</td>
<td>3</td>
<td>26</td>
<td>27.08</td>
<td>5</td>
</tr>
<tr>
<td>High income/prestige</td>
<td>34</td>
<td>30.91</td>
<td>4</td>
<td>31</td>
<td>32.29</td>
<td>3</td>
</tr>
<tr>
<td>Best option at time</td>
<td>26</td>
<td>23.64</td>
<td>5</td>
<td>42</td>
<td>43.75</td>
<td>1</td>
</tr>
</tbody>
</table>

Participants were also given an opportunity to list any alternative reasons they had for becoming lawyers, and a number of solicitors did this, using their own words to

---

28 Survey Q8 Regardless of whether law as a career has lived up to your expectations, why did you initially decide to do law?
29 An examination of findings from this survey question is set out in Appendix 6.
30 In only one case was there a statistically significant difference between women and men in their reasons to choose law as a career. Men (43.75%) were far more likely than women (23.64 %) to rank best available option at the time (marked in bold on the Table) in their top reasons – MW-U=4218.00 Z=-3.005 p=0.002. There were also some statistically significant differences within the groups of women and of men when the results were analysed using the survey demographic data, and these are set out in Appendix 6.
describe the various motivations that drove them. These reasons were as varied as the individual participants, ranging from *t.v. lawyer programs* to *scope for deductive reasoning*. Nevertheless, it was possible to group the 45 nominated reasons into six broader categories, as Table 3.6 below illustrates.

Table 3.6: Q8 – Other reasons to become lawyers

<table>
<thead>
<tr>
<th><strong>Q8 - other reasons to become a lawyer</strong></th>
<th><strong>FEMALES</strong></th>
<th><strong>MALES</strong></th>
<th><strong>TOTAL</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Other studies (school/university) or aptitudes opened way</td>
<td>10</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Benefit/fit with broader career and study plans</td>
<td>6</td>
<td>8</td>
<td>14</td>
</tr>
<tr>
<td>Intellectual attractions/challenges</td>
<td>5</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Income related</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Desire to do good in world</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>External influences (family, friends, popular culture)</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Total Additional Reasons given by survey participants</td>
<td>25</td>
<td>20</td>
<td>45</td>
</tr>
</tbody>
</table>

Both my survey data and interviews with practitioners suggest some lawyers enter the profession for altruistic reasons, but also for a mix of practical and pragmatic reasons around law being a logical choice\textsuperscript{31} that seems to offer good prospects. Very few decide on a career in law for reasons of flexibility in their lives. Only around 10 percent of women and men reported they chose a legal career because it afforded flexibility for family or other interests.\textsuperscript{32} Most interview participants also said they had *absolutely no idea* what to expect from a legal career, or that their expectations were a complete mismatch with the reality they encountered.\textsuperscript{33}

Many solicitors I interviewed had to some extent expected a high-pressure work environment. However, very few were prepared for what they described at one extreme as the tedium of *filling in forms* and *shuffling paper*; and were even less equipped to manage the *unrelenting* nature of the long hours, the inability to have a life outside their work, and work-related stress. For many research participants there

\textsuperscript{31} For example, based on school results, or a fit with broader career plans.

\textsuperscript{32} For details see: Appendix 6.

\textsuperscript{33} For example: I(m)30 15-17; I(f)37:14; I(m)42:15-16; I(f)44: 19-21; I(f)77: 11.
was a stark mismatch between initial expectations and the reality of private legal practice as a solicitor.  

One of the key challenges for the private profession is that, despite any initial ideals or hopes, many lawyers do not stay. It is beyond the scope of this thesis to explore this question further, but I suggest it is a crucial area for future investigation by the profession as one of a number of measures aimed at stemming the loss of solicitors in Queensland. The disconnect between expectations and reality is significant in the context of my research, as I suggest that where solicitors are ill-prepared for the reality of legal culture and workplace practices, they are less able to respond in productive and innovative ways, and they are more likely to abandon a legal career than work to create change.

Women are more likely to leave than men, and ‘what happens to the women?’ and ‘why?’ are critical human resource management questions the profession needs to address. In the next Section, I look more closely at the phenomenon of the ‘disappearing’ women as it arose in my research.

3.5 THE LADY VANISHES

I reported in Chapter 2 that a number of women ‘disappeared’ from their nominated

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34 A reality that is explored in Chapters 4, 5 and 6 of this thesis. Many wondered how they had lasted so long: Sometimes I wonder what on earth I’m still doing here, I really do. It’s a very unforgiving profession. – I(f)76: 14 [woman – 30s – employed solicitor – metropolitan]. Others admitted to an ongoing ambivalence about their profession: Like life itself, it has incredible wondrous moments, and some of the lowest moments you could ever experience. – I(m)72: 7 [man – 40s – principal – metropolitan].

35 Some solicitors spoke passionately about their desire to help people as a primary reason to study law. The reasons lawyers give as to why they stay are examined in more detail in Chapter 6, but it was disturbing to see that many nominate negative reasons for staying i.e. they remain in the profession because of the financial constraints they face and/or because they have no other options. See: Chapter 6, Section 6.9 Staying in the Main Game, p 6-33ff.

36 It was also an issue nominated as essential for future consideration by the West Australian profession in its study of lawyer retention – discussed more fully in this Chapter, Sub-Section 3.7.3 Western Australia, p 3-31.

37 Taken from the title of the television documentary ‘The Naked Lady Vanishes’ Australian Film, Television and Radio School, 1998 (examining the controversy surrounding the nude portrait displayed in the common room at the New South Wales Bar Association – and the reactions of men and women members of the Bar to the hanging of the portrait in a shared space). In the course of the documentary, the Association’s CEO from 1993-1997, Babette Smith, described the image she had of the predominantly male members of the Bar Association in these terms: ‘I was among a group of people [who were] marooned on an island, amidst a sea of social change, and bewildered by it’. 

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contact addresses and from Queensland Law Society records between the return of surveys and the time when interviews were set up and conducted – a period of some five to six years.\(^{38}\) As I suggested earlier, it may be that some of the ‘missing’ women changed their name by marriage,\(^{39}\) and the lack of any cross-referencing on the public database means they cannot be readily located. However, in the light of findings in other jurisdictions, the official numbers of solicitors who fail to renew practising certificates,\(^{40}\) and the disillusioned comments proffered by interviewees, I suggest a substantial number, perhaps most, of these women have been lost to private legal practice. Some were originally recruited in a highly competitive environment by some of the State’s leading firms. No industry can sustain such an ongoing loss of talent without concomitant costs in terms of time, output, profits, and morale.

Other legal profession researchers have noted a similar phenomenon.\(^{41}\) A 1990 Canadian survey of 1,100 women and men lawyers included more than 100 who had left the law and who were ‘disproportionately women’.\(^{42}\) In 2001, the attrition rate for Canadian legal professional women was reported as higher than for men.\(^{43}\) In 2006, Jean McKenzie Leiper reported that some ten percent of her research sample of women lawyers had either left the profession or ‘disappeared from the records’.\(^{44}\) Also in 2006, then president of the United States National Association of Women Lawyers urged readers of a report on women leaders in the profession to ‘consider the women whose stories did not have the opportunity to be published as they

\(^{38}\) See Chapter 2, **Table 2.2: Potential interviewees (survey group)**, p 2-16. The figures suggest the possibility some 30% of the original potential interviewees from my study were no longer in private legal practice.


\(^{40}\) See above **Table 3.4: Non-renewal of all practising certificates**, p 3-11.

\(^{41}\) Disappearing women are not only a legal profession phenomenon – for example, see: Kantola, Johanna, ‘“Why Do All the Women Disappear?” Gendering Processes in a Political Science Department’ (2008) 15 (2) *Gender, Work and Organization* 202.


\(^{44}\) McKenzie Leiper, Jean, *Bar Codes: Women in the Legal Profession* (2006) 190. (Her research looked at the careers of some 110 women lawyers in Upper Canada. These women were predominantly in private practice but also included some in government, industry and the judiciary – refer: esp pp 191-199.)
“disappeared” from our ranks’. 45

I support the contention that ‘organizational inability to retain and advance women at the highest levels’ makes the stories of women who remain within the profession ‘even more valuable’ as women continue to struggle with barriers inside their chosen profession.46 In a State where we hear the Chief Justice lamenting the lack of lawyers47 and where we know the proportion of women operating at senior levels within the private profession does not reflect the numbers leaving law school, it seems essential that we learn more about the female solicitors ‘missing’ from the private profession’s ranks.

The next Section provides an insight into the outdated culture and attitudes that persist in sections of the legal profession and that form a seemingly insurmountable barrier to any possibility for real and lasting change.

3.6 A QUESTION OF CULTURE
Culture may be seen as ‘constituting a “way of life”. . . and this will include codes of manners, dress, language, rituals, norms of behaviour and systems of belief’.48 Ronald Burke points out that organisational culture is the ultimate key to the success of flexible workplaces, because high ‘time, energy, and work commitment’ cultures are inimical to flexibility.49 These cultures create particular difficulties for women. The clash of public and private sphere responsibilities means that female lawyers may work harder than their male counterparts, but they may not have the workplace presence that would afford them similar opportunities for professional success.50 I will return to the long hours culture in Chapter 5, but I will consider here some

45 Lerner, Marcy and Entzminger, Angela (and staff of Vault), View from the Top: Q & A With Legal Women Leaders (2006) xvii.
46 Ibid. The report includes interviews with more than 100 women in leadership positions in top law firms and leading companies and organisations – more than 70 were partners in large private law firms.
47 Refer: Chapter 1, Section 1.2 Backdrop to the Research, p 1-3.
aspects of the traditional nature of legal practice culture.

A ‘pre-existing culture of clubs or old school tie attitudes’ was identified as a barrier to women’s advancement in New South Wales.\textsuperscript{51} The club or old school tie culture is not a phenomenon found only outside Queensland. A 2006 opinion piece in the Queensland press entitled ‘Nudgee Nudgee, wink wink’, described two young men who had attended Nudgee College in Brisbane and who were charged with serious assault.\textsuperscript{52} Both accused were sentenced to perform community service. No convictions were recorded. Their ‘bright future’ and school achievements (which included one accused being captain of ‘the First XV rugby side’) carried great weight. However, one of the accused had previously appeared before the Brisbane District Court for sentencing. On this first occasion the presiding Judge told the court he felt ‘uncomfortable’ proceeding to sentence because he too was an old boy of Nudgee College. The matter was adjourned and the sentencing of both accused took place two weeks later.\textsuperscript{53}

Some of my research participants noted the ease with which men move from schools to clubs, and how both continue to form a strong frame of reference throughout their working lives. In 2003 the incoming Queensland Law Society president was interviewed for a feature in the daily Queensland newspaper. The journalist described the setting at the prestigious Brisbane Club, reporting that the president ‘sips a white wine from the … impressive cellar’ and the ‘subdued murmur of male voices drifts


\textsuperscript{52} O’Connor, Mike, ‘Nudgee Nudgee, wink wink’, The Courier-Mail (Brisbane), 27 March 2006, available from <http://www.couriermail.news.com.au/story/0,20797,18617176-27…> at 25 April 2006. Nudgee College was described as ‘one of the most expensive and exclusive Catholic private schools’ in Brisbane.

\textsuperscript{53} Watt, Amanda, ‘Nudgee sentencing avoided’, The Courier-Mail (Brisbane), 8 March 2006, 7. The only reason reported for Judge Noud’s ‘discomfort’ was the fact that he had attended the same school (and this would have been decades earlier). There was no suggestion that he knew the accused, or that he had any ongoing/active involvement with the school. One woman interview participant (without any reference to these news reports) referred to: The Nudgee college thing. I know so many who have been to Nudgee Boys College. A lot of them are in law, and they just have this way about them. – I(f)53:6. Hilary Sommerlad has written about the way young professionals ‘become’ lawyers and are acculturated into the profession, describing a ‘congruity between the constitution of white, middle-class masculinity and the legal profession’. Her analysis of the profession ‘stresses the salience of “fitting”, rather than credentials’, for success – see: Sommerlad, Hilary, “Becoming” a Lawyer: Gender and the Processes of Professional Identity Formation” in Sheehy, Elizabeth and McIntyre, Sheila (eds), Calling for Change – Women, Law and the Legal Profession (2006) 159, 160-166.
through the room’. Although the Brisbane Club admits women members, such clubs remain largely male preserves. Pages of newsprint have been devoted to the efforts of women and men to open the membership of the exclusively male Brisbane Tattersall’s Club. Tattersall’s Club may be experiencing a declining membership, but lawyers comprise nearly one-quarter of that membership, with male solicitors specifically comprising some 17 percent of members.

These clubs are more than casual social meeting places. They are often at the heart of high level economic and political networking. They are places where serious connections are forged and serious business is transacted. Often they are places where women have no place. The University of Queensland Law Graduates Association chose Tattersall’s for a reunion dinner in 2004, provoking protests to, but no action by, the Association president, Justice Glen Williams, for a change of venue. In other places and circumstances business people and lawyers have protested by withdrawing patronage, and in Queensland the Bar Association acted to ban functions at

54 O’Connor, Mike, ‘Cheers to the trials ahead’, The Courier-Mail (Brisbane), 29 October 2003, 19. (It is not clear from the article whether the then QLS president or the journalist nominated the venue.)
55 There have been feature articles, news stories, editorials, letters to the editor, cartoons, and invited opinion pieces. See, for example: Emerson, Scott, ‘Tradition caves in to hard reality’, The Australian (Sydney), 4 December 2001, 5; Nolan, Justine, ‘Old boy bastion warms to girls’, The Courier-Mail (Brisbane), 12 February 2002, 3; Page, Graeme, ‘Let women on to our turf’, The Courier-Mail (Brisbane), 5 February 2003, 15 (note: Graeme Page is a senior Queensland barrister who has used his membership at Tattersall’s to agitate for change and promote, albeit unsuccessfully, membership for women); Editorial, ‘Members crucial to Tatt’s discrimination’, The Courier-Mail (Brisbane), 10 February 2003, 10; King, Madonna, ‘Skirting the issue’, The Courier-Mail (Brisbane), 9 March 2004, 15; Booth, Susan, ‘Open doors by force’, The Courier-Mail (Brisbane), 24 March 2005, 33 (Susan Booth is the Queensland Anti-Discrimination Commissioner); Lloyd, Graham, ‘Push to close door on women’, The Courier-Mail (Brisbane), 2 March 2006, 3; Houghton, Des, ‘Battle of sexes ends’, The Courier-Mail (Brisbane), 2 November 2006, 15; Houghton, Des, ‘Club votes to close door on women’, The Courier-Mail (Brisbane), 20 December 2006, 9 (this was the third time in four years the club members voted to continue to exclude women); Christiansen, Melanie and Wardill, Steven, ‘Tatts boycott call’, The Courier-Mail (Brisbane), 21 December 2006, 7.
56 Anon., ‘Fighting to keep numbers from falling’, The Courier-Mail (Brisbane), 17-18 March 2007, 39. This article reported that the ban on women ‘may already be having an impact’ with ordinary membership down from 4700 in 1998 to 2900. The article reported that membership included 17 judges, 510 solicitors and 140 barristers. Thus 23% of the membership generally is male lawyers, and 17.6% specifically is male solicitors.
57 Even where women are admitted as members, membership can be overwhelmingly male and women can report feeling unwelcome. See: McCullough, James, ‘The money club’ The Courier-Mail (Brisbane), 14 December 2002, 69, 73. McCullough writes ‘The popularity of clubs in business is waning somewhat in Sydney and Melbourne … but in Queensland the tradition is strong’. He attributes this to ‘[t]he conservative nature of Queensland, the large underlying rural community, the reliance still in business on the Old School Ties …’ In 2005, McCullough wrote a full page feature article concluding the ‘old school tie is alive and well in Queensland business’ – McCullough, James, ‘Patterns of lasting influence’, The Courier-Mail (Brisbane), 5-6 March 2005, 29.
Tattersall’s, as have some leading accounting firms. The Queensland Law Society has not taken similar action.

Helena Kennedy described in the strongest terms the pressures on young lawyers to conform to longstanding ‘tribal rituals’. She saw an unwritten ‘code of conduct’ being used to ‘force anyone who is an outsider by virtue of their sex, race or class to conform to [a] paralysing and inward-looking ethos. Tradition is invoked to maintain vested interests and social reproduction ensues’. She said ‘for many within the profession it is an unforgivable betrayal to criticise one’s brothers in law’. Others have queried to just what extent is ‘the preservation of traditions inherited from a colonial past an important factor in maintaining the integrity of the legal system and the profession?’ and to what degree ‘does a new vision of ... the legal ... profession need to be formulated to accommodate the needs of the post-colonial present?’

Many of my own research interviewees spoke of an invisible rule book that still ordered aspects of solicitors’ professional lives. One principal described unstated, but well-understood, rules that went to what was appropriate in a person’s appearance – what the partner might think was a marketable “looking” person for the purposes of going to the [corporate] rugby box to pick up the next job from the client. Others described certainly this kind of blokey, old-school kind of thing, for the clubs and stuff like that. A lot of the clients of the firm are also men so they’re sometimes taken to the

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59 Anon., ‘Fighting to keep numbers from falling’, The Courier-Mail (Brisbane), 17-18 March 2007, 39. Leading accounting firms reported not renewing membership, with one senior accounting partner stating: ‘the way we promote women …it was inconsistent for me to belong to an organisation that excludes them’. See, for example: Grunwell, Rachel, ‘Lawyers bar bias, and they won’t join the club’, The Australian (Sydney), 15 February 2001, 4; Edmistone, Leanne, ‘Gender ban puts bar on gentlemen’s club’, The Courier-Mail (Brisbane), 3 February 2003, 5. There was also strong support for women in the struggle to open up membership of Melbourne’s Athenaeum club – see: Stewart, Cameron, ‘Hush please: men in revolt as women turned away’, The Australian (Sydney), 31 December 2008, 1 and 4.

60 Kennedy, Helena, Eve was Framed – Women and British Justice (1992) 274. She recounted her experiences in the legal profession, specifically within the English Bar.

61 Ibid, 41.

62 McQueen, Rob and Pue, Wesley, ‘Misplaced Traditions: British Lawyers, Colonial Peoples’ (1999) 16 (1) Law in Context 4. They remind their reader the purpose of early legal training within British colonies was ‘developing a particular homogenous cultural mindset’ – a mindset that would accept certain moral ‘truths’ and that would consider law ‘a manly endeavour’ (at 11).

63 1(m)72: 1-2 [man – 40s – principal – metropolitan].
One senior male practitioner acknowledged that women may feel excluded from some professional activities because the men have built up their rules [through] the groups they’ve been involved in, whether it’s school or university or sporting or whatever it happens to be.65

One senior woman suggested there was probably an invisible rule book that required women [in order] to succeed to be more like the stereotyped male [with] the participation and the long hours, but pointed out it is very difficult, I think, to measure success in some other way.66 Other women identified pervasive invisible rules as detailed by this participant –

There’s an expectation that sometimes I felt that the “girls” in the firm had to do more and work harder and impress more than males. But if boys had a few beers and told some good stories, if the partners had a good mately relationship with the young fellows, then those boys would go a long way, whereas the girls had to physically and academically prove themselves. [woman – 30s – former associate – regional]67

One young male solicitor specifically recognised an invisible rule book and identified sport and drinking as critical –

You talked about sport, because it’s very blokey. And you drank because that’s the blokey thing to do. And if you didn’t conform to that culture, then it was pretty hard to get ahead. You have to fit in and conform, or you’re likely to be ostracised or sacked.

[man – 30s – employed solicitor – metropolitan]68

Still other practitioners recognised the concept of an invisible rule book, but felt it was less insidious than in years past because unwritten rules that used to exist have really gone by the wayside. One participant saw the Queensland profession as not the same sort of closed shop that it was in the past. She suggested –

The opportunities that are available now are so varied, overseas and interstate, that it’s not the same sort of structure that was there or the same people in power. I think that senior partners in the big firms in Brisbane really did have a big control over those sorts of things. [But]

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64 f73: 10-11 [woman – 30s – former senior associate – metropolitan] Tatts is a reference to Tattersall’s, Brisbane’s men-only club.
65 m75: 2-3 [man – 40s – high profile in profession – metropolitan].
66 f77: 3 [woman – 40s – now senior government lawyer – metropolitan].
67 f80: 7.
68 m30: 4.
often those big firms aren’t even controlled by Brisbane partners anymore, and not many of them have partners over fifty. [woman – 50s – senior practitioner – metropolitan]69

While a few interviewees denied outright any suggestion of an overt or covert rule book that operated to prejudice women or any other group within the profession, most identified it as extant within some areas, groups of lawyers, firms, or work units. Research interviews indicated there does appear to be a growing acknowledgement by the profession that this is an outdated and inappropriate way to operate. The ongoing dilemma many women face is that their workplaces may publicly eschew such practices, but in some vital aspects, such as promotion, the firms continue to act on the results of those same practices. One senior woman said –

Women are disadvantaged because they’re not involved in the boys’ club that goes for lunch, or the boys’ club that goes for coffee, or the boys’ club that invites the client and goes to rugby, or golf. And [the firm] recognise all that. But when the crunch comes to providing a career path and promotion they will still opt for the person who can bill one million, two million, which means the person working full time, long hours, [and] the person that’s got the clients ringing him directly – which is going to be in large part related to relationships that have been able to be formed over all that blokey sort of stuff. [woman – 40s – senior position – metropolitan]70

A mindset of old schools, old money, old clubs, within a masculine tradition, is still manifest within parts at least of the Queensland profession.71 But there was a sense of potential and strong mood for change among solicitors I spoke to in the course of my research. Many solicitors, women and men, felt disenfranchised by a Law Society they saw as elitist72 and out of touch with the reality of a modern profession. Some solicitors described the Queensland Society as a boys club comprised of a lot of older men who have unreal expectations, and who have no understanding at all [of what it

69 I(f)70: 1-2. This view was closely echoed by I(f)31: 3-5 [woman – 30s – partner – metropolitan].
70 I(f)37: 9.
72 I(f)38: 24 [woman – 50s – senior litigator – metropolitan].
is like for women in the profession] because their own wives haven’t worked.73

Those involved in the operation of the Law Society were described as clubbing together and marginalising women. This in turn was equated to a failure to utilise the incredibly beneficial resource of women in the profession.74 Many solicitors said the profession needed to move forward and that today’s practitioners don’t want what lawyers 20 years ago necessarily wanted. It’s not the Holy Grail of partnership and high [monetary] reward. Rather the future was about good supervision, good training, work life balance. The Law Society needs to feed off that requirement for relevance.75 Many solicitors recognised women were disadvantaged, but argued if the professional body, leading players, take a stand and set an example, the norm will change.76

I now turn to how Queensland is positioned within a broader Australian picture.

3.7 SISTERS-IN-LAW

Women are leaving the Queensland profession, and those who remain are less likely than their male colleagues to achieve senior roles, and less likely to have children. In other Australian States, both government and professional bodies have extensively engaged in research about women in the legal profession. The Queensland profession could benefit from similar investigations and from benchmarking against the standing of women in other jurisdictions.

I reviewed the 2007 annual reports for each of the Australian law societies (or equivalent) to provide an overview of the numbers77 of women within the profession, and also of the extent of women’s involvement with governance of their profession. The following Table 3.7 sets out the total number of lawyers or total membership of each peak body and the number and percentage of those who were women in that

73 I(f)32: 16-17 [woman – 40s – part time employed solicitor – metropolitan].
74 I(f)34: 29 [woman – 30s – commercial partner – works from home – regional].
75 I(m)36: 25 [man – 40s – partner – metropolitan].
76 I(m)75: 19 [man – 50s – former sole practitioner – metropolitan].
77 As at the end of June 2007, based on 2006-07 Annual Reports unless otherwise specified. I used the most recent annual reports available to me as another check on whether the profession generally had achieved change, or whether the concerns expressed by research participants remained current.
reporting period. I have also collated figures for those practitioners involved in the governing council or board of each professional body.

As the Table notes show, I sound a caution about the figures due to different criteria used by States in compiling data. Nevertheless, I suggest this analysis provides a useful guide to the numbers of women participating in legal professional life. It supports my earlier assertion that women in Queensland lag numerically behind their sisters in other Australian States (particularly the mainland eastern States), while the gap between Queensland and other jurisdictions is most notable with respect to women involved in professional governance.\textsuperscript{78} I argue that Queensland has the potential to achieve much more substantial involvement of women in the governance of the profession. The review of research and achievements in other States in the next Section also demonstrates the potentials and possibilities for Queensland.

Table 3.7: Women in practice and professional governance.

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Members/lawyers\textsuperscript{1}</th>
<th>Number women</th>
<th>Percentage women</th>
<th>Members governing council/board\textsuperscript{2}</th>
<th>Number women</th>
<th>Percentage women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory\textsuperscript{3}</td>
<td>not available</td>
<td>15</td>
<td>4</td>
<td>26.67%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New South Wales</td>
<td>20337</td>
<td>8747</td>
<td>43.02%</td>
<td>23</td>
<td>9</td>
<td>39.13%</td>
</tr>
<tr>
<td>Northern Territory\textsuperscript{3}</td>
<td>not available</td>
<td>13</td>
<td>6</td>
<td>46.15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Queensland\textsuperscript{4}</td>
<td>7967</td>
<td>3189</td>
<td>40.03%</td>
<td>12</td>
<td>2</td>
<td>16.67%</td>
</tr>
<tr>
<td>South Australia</td>
<td>2915</td>
<td>1373</td>
<td>47.10%</td>
<td>31</td>
<td>14</td>
<td>45.16%\textsuperscript{5}</td>
</tr>
<tr>
<td>Tasmania\textsuperscript{6}</td>
<td>453</td>
<td>155</td>
<td>34.22%</td>
<td>16</td>
<td>3</td>
<td>18.75%</td>
</tr>
<tr>
<td>Victoria\textsuperscript{7}</td>
<td>11694</td>
<td>4806</td>
<td>41.10%</td>
<td>18</td>
<td>6</td>
<td>33.34%</td>
</tr>
<tr>
<td>Western Australia\textsuperscript{8}</td>
<td>3057</td>
<td>1248</td>
<td>40.82%</td>
<td>20</td>
<td>10</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

\textsuperscript{78} Professional participation figures within Queensland are particularly telling in relation to women in ownership roles in the private profession. Although the Queensland Law Society reported the number of women solicitors moved from 27% in 2000 to 36% in 2005, the women who are principals has shifted very little as a proportion of the total number of principals. See: Section 3.3 Comparison With Broader Picture, p 3-9; also: Chapter 6, Section 6.7 The Holy Grail, p 6-24, at p 6-25.
Table Notes: 1. Where possible all figures were drawn from the published annual reports for 2006-2007 for each of the States’ peak bodies – Australian Capital Territory Law Society, Law Society of New South Wales, Northern Territory Law Society, Queensland Law Society, Law Society of South Australia, Law Society of Tasmania, Law Institute of Victoria, and Law Society of Western Australia and the Western Australia Legal Practice Board. While the Table provides a useful starting point for comparison, caution is needed as some States count practising certificates issued, some count total peak body membership, some (where there is a fused profession) combine solicitor and barrister members into a single category.

2. Some annual reports show casual vacancies, replacements and resignations during the reporting year. Where a woman has held a position at any time during the year I have counted her as one of the women members of that particular governing Council or Board. Also, where different categories of membership are involved, I have used the total of all categories involved with peak body governance except that I have not included ex officio members (e.g. State Attorneys-General, Law School Deans).

3. Neither the Australian Capital Territory nor the Northern Territory have information on their Law Society websites on lawyer/member numbers. A member of the Women Lawyers Association of the ACT advised these statistics are not available and that her Association has requested the ACT Law Society to commence collection and collation of such data. I requested information from the Northern Territory Law Society but received no response.

4. The total solicitor and female solicitor figures are taken directly from the 2006-07 Annual Report. The 2006-07 Report shows a total of 8 members of Council of whom 2 were women. Law Society staff kindly provided detailed follow up re numbers on the Queensland Law Society governing Council. A new Council came in at August 2007 and comprised 13 members (including the Attorney-General’s nominee). Of the 12 elected members only 2 were women (including the President who is only the third woman in 80 years to hold this position).

5. Of the 31 who served on the SA Law Society Council during the 2006-07 period, 14 were women.

6. For Tasmania, information as to practitioner numbers was obtained from <http://www.taslawsociety.asn.au/web/en/lawsociety/practice/legalpractitioners/bar_sol.html> at 8 June 2008. The annual Law Society report contains details of Council membership but all names are shown with an initial rather than a full first name, making it impossible to determine the sex of individual members from the face of the Report. Law Society staff kindly provided the male-female Council numbers.

7. Figures were calculated from details within the Annual Report as to Practising Certificates issued. The Report states elsewhere (p 8) that women comprised 46% of all Victorian Law Institute members.

8. Figures based on details of resident practitioners in private practice roles as set out in Western Australia Legal Practice Board Annual Report.

As foreshadowed, I now turn to an overview of the status of women in the legal profession throughout Australia. The two largest Australian State professions (by lawyer numbers) currently lead the profession in terms of their extensive research studies of women working as lawyers. I will review that work in New South Wales and Victoria, then turn briefly to Western Australia, and then to the two smallest States (South Australia and Tasmania). This Australian research demonstrates how seriously other jurisdictions view the position of women within their ranks, the similarity of issues with those disclosed by my Queensland study, and the commitment to effecting change through ongoing research and monitoring.

3.7.1 NEW SOUTH WALES
Since the mid 1990s the New South Wales legal profession has shown ongoing commitment and leadership in research within the private legal profession,
particularly around issues relating to women, and including discrimination and workplace flexibility. The New South Wales’ profession went further than a mere investigation of the ‘scope and intensity’ of pressures faced by its solicitors. The Society’s 1999 President’s report stated it was ‘incumbent on the Society … to promote equality of opportunity and a work/family balance so as to ensure, as far as possible, the well-being of members throughout their working lives’. 

The Society convened a Gender and Industrial Relations Taskforce as a key strategy to encourage the profession ‘to adopt more appropriate work practices through a program of education and continuing research’. The Taskforce’s ‘far reaching recommendations’ were adopted by the Council of the New South Wales Law Society. These included the expansion of the Society’s Equal Opportunity Policy to include a flexible work practices model, and the initiation of ‘research and education projects’ in co-operation with Lawcover (the Society’s insurance arm) ‘to enable the sharing of information concerning the nexus between professional negligence claims and work-related stress’.

The New South Wales Society’s *Equal Opportunity Handbook and Model Policies* was adopted in 2001. The *Handbook* points out the reality that legal workplace culture, as manifested by the conflation of work commitment with long hours, failed to recognise solicitors had family and other responsibilities, leading to a serious mismatch between work demands and caring for children. It recognises overt and systemic discrimination continues to affect legal workplaces.

For New South Wales at least, the debate has already moved well beyond whether or not there were genuine concerns and issues to be addressed, to strategies for change.

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81 Ibid.


84 Above n 83, 37.

85 Ibid, 38.
and the practicalities of implementation. A 2002 report urged the development of alternative career paths; a recognition that people contribute to organisations in ways other than billable hours; and a shift in culture to recognise success in forms other than partnership. By 2003, the availability of written workplace policies had increased; the percentage of employees with access to flexible work options had increased; but satisfaction with lifestyle balance remained low. In 2006, lifestyle was still the most common reason New South Wales’ practitioners gave for leaving the private legal profession.

I suggest that, for Queensland, the value of the New South Wales work lies in the identification of key issues that affect women’s progress in legal practice. Research findings and a public acknowledgement of the issues in Victoria have similar significance.

### 3.7.2 VICTORIA

For more than a decade the Victoria legal profession has been an important leader in Australian research on the nature of legal work and the legal profession, particularly how women negotiate their careers within the profession. A 1996 study found that if

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86 Law Society of New South Wales, After Ada – a new precedent for women in law (2002) – found that practitioners working part time were more satisfied (78%) with their work-life balance than those working full time (62%); also those working in government (71%), corporate (71%), and community legal centre (66%) settings were more satisfied with the balance they had achieved than were their private practice counterparts (61%).

87 Above n 86, 23. I consider these in in Chapter 4, Section 4.6 Family or Firmily? p 4-33, at p 4-34..


90 Above n 89, 43 – although the gap between availability at 58.6% of respondents, and the actual usage or take-up rate at 21.1% was considerable. (See discussion of Queensland policy availability as opposed to utilisation in Chapter 5, Section 5.9 Rhetoric and Reality, p 5-43.)

91 Above n 86, 59 – with less than half of the practitioners recording they were either satisfied (36.0%) or very satisfied (10.4%).


93 The final report from the study was issued in two parts, with the first collating findings about job satisfaction, and the second setting out guidelines for effective practice: Victoria Law Foundation, Facing the Future: Gender, Employment and Best Practice Issues for Law Firms. Job Satisfaction Survey. Interim Report. (June 1995); Victoria Law Foundation (Herron, Mark), Facing the Future: Gender, Employment and Best Practice Issues for Law Firms. Final Report. (vol I - The Job Satisfaction Study) (1996); Victoria Law Foundation (Woodger, Annie and Beaton, George), Facing the Future: Gender, Employment and Best Practice Issues for Law Firms. Final Report. (vol II - Effective Practices Guide) (1996) (The resulting guidelines have an important human resources
legal workplaces of the future were to be improved for both women and men, ‘it will be by means … such as flexible work practices and parental leave’. 

In 1998, the Victorian Bar Council published a study on equality of opportunity for women. The report focussed on barristers, not solicitors, but it attracted widespread professional and mainstream attention. The private legal profession was publicly confronted with the fact there were women lawyers in Australia who faced discrimination and disadvantage. The report writers found demonstrated gender bias against women, including: sexist attitudes, ‘inappropriate behaviour’, and negative ‘attitudes towards parenthood’. They also found the ‘beliefs and practices of solicitors’ contributed to women barristers’ lack of access to a range of work enjoyed by their male colleagues.

As the 1990s drew to a close, the Victorian Women Lawyers Association noted that some 15 studies or reports touching on ‘gender issues, job satisfaction, staff turnover and work practices within the legal profession’ had been published across Australia ‘since 1994’. The various reports had a number of common themes and referred

management focus and continue to be an excellent guide for private law firms who seek to improve policies and practices.)

94 Victoria Law Foundation (Herron, Mark), above n 93, 32.
97 Above n 95, 151. The Victorian women continue their campaign for equal recognition within their profession – see: Russell, Mark, ‘Female barristers push for equal pay’ The Sunday Age (Melbourne), 22 March 2009, 5.
98 Above n 95, 151 (emphasis mine).
99 Victorian Women Lawyers (Trifiletti, Gabby), Taking up the challenge – women in the legal profession (1999) ii.
100 Ibid, 19. These can be summarised as –
1. Women’s career patterns are remarkably similar across Australian jurisdictions
2. Women are under-represented in private practice (especially at senior levels)
3. Career paths of women and men diverge within 5 years of graduation
4. Having children (or the expectation women will have children) has profound career effects
5. Alternative workplace policies and practices need to be designed so as not to further marginalise those with carer responsibilities
6. The majority of evidence indicates gender bias (by both direct and indirect discrimination) against women.
to ‘the existence and impact of sex discrimination, sexual harassment and gender bias on women lawyers’. 101

The Victorian Women Lawyers’ report stressed the ‘critical’ nature of an appropriate evaluation of employee needs and development of workplace strategies to address those needs, 102 if women in particular, and the profession in general, were to move forward. This is a timely call in the light of 2001 Victorian survey findings that showed slightly more than half (54 percent) of survey respondents saw themselves as having a long term future in the legal profession, with only 21 percent willing to remain in their present workplace for up to 12 months. 103

The Victorian Women Lawyers Association has published reports on employment practices 104 and flexible partnerships. 105 The Association described the issues canvassed in the first study as having ‘an enormous impact on a lawyer’s day-to-day employment experience’. 106 The emphasis on flexibility, what is already in place as well as what might be possible, is the key theme of the second publication on flexible partnerships. This flexible partnership report is unequivocal in the view that, as women have comprised at least half of law school graduates for some two decades, it is no longer possible to dismiss concerns about women’s failure to attain senior professional levels as a ‘minority’ problem. ‘Factors that affect the retention and advancement of women lawyers inevitably affect the development of the profession as a whole’. 107

7. A significant proportion of women and men report dissatisfaction with the law firm environment (many moving to corporate or public sector employment)

101 Above n 99, 4.
102 Ibid. Some years later, an executive member of the Victorian Women Lawyers commented that to meet the challenges highlighted in this report, law firms needed not only to attract quality staff, but to retain them – see: Will, Kriss, ‘Taking up the Challenge’ (2000) May Australian Legal Practice 5-6.
104 Victorian Women Lawyers, A Snapshot of Employment Practices 2001: A Survey of Victorian Law Firms (2001). A survey of a selection of law firms of varying size. The tabulated findings allow employers and employees to examine a range of factors relevant to the firms surveyed including: hours worked, flexible work arrangements, written workplace policies, use of leave entitlements for non-traditional purposes, and provision for women to return from maternity leave.
105 Victorian Women Lawyers (Kaufman, Sue and Frost, Georgina), Flexible Partnership – Making it Work in Law Firms (2001). The report also utilises some extensive American research.
106 Victorian Women Lawyers, above n 104, 3. These included work hours and work patterns, leave entitlements, and traditional and non-traditional employment practices (at 4).
107 Above n 105. The report made the point (at 33) that women in partnership roles were more likely to experience high levels of job satisfaction than were their female employee colleagues. The lack of
Victorian Women Lawyers have also published a review of flexible work practices that provides ‘insight into what those working within the legal profession actually think about flexible work practices’.108 ‘Attitudinal barriers’ that have been routinely ascribed to clients, as well as to co-workers and staff, were described as more myth than reality. Where such barriers did exist, it seems they have been deliberately ‘overplayed’ by critics of legal workplace flexibility, which in turn has deflected attention from prevailing traditional workplace cultures and mindsets of professional and firm leaders.109

Outdated approaches lead directly to ‘a lack of practical support and encouragement’ for flexible work policies and practices.110 They also mean that flexible working that ‘works’ is still an exception in private practice. A move to flexible work practices (assuming they are available in theory and in practice) has been described by some as a ‘career limiting move’.111 The belief that flexible work practices will have a negative affect on career progression can translate into a reality. I argue this is a direct result of outdated cultures and limited and ineffectual management knowledge and skills. I also argue that managers and senior partners within private legal firms generally lack knowledge and expertise in people management. This lack means they are unable to explore new options and modes of working, let alone implement them effectively in a modern and dynamic workplace setting.

women in senior positions also has adverse effects in terms of women available to act as role models and mentors to younger women entering the profession. The report decried the lack of wide-ranging and longitudinal studies in Australia, but said (at 5) it is clear that stress and staff attrition observed at partnership level in private law firms are part of a long-term and profession-wide trend and ‘women lawyers encounter these problems in vastly disproportionate numbers’. Issue of solicitor stress and long hours, as well as client demands, are detailed in Chapter 5 of the thesis.

108 Victorian Women Lawyers, A 360° Review: Flexible Work Practices – Confronting myths and realities in the legal profession (2005) 3 (emphasis in original). Based on data from 60 interviews and six focus groups, this report tackles the main myths about flexible work practices and examines those factors that inhibit workplace flexibility.

109 Above n 108, 5.

110 Ibid.

111 Law Institute of Victoria and Victorian Women Lawyers (Patterson, Alicia), Bendable or Expendable? Practices and attitudes towards work flexibility in Victoria’s biggest legal employers (2006). This comprehensive report builds on much of the earlier work and commissioned research of both the Association and the Institute. While acknowledging differences in research methods and samples, the report considers broad changes and shifts in workplace flexibility markers over a period of some four years. This is not a simple exercise because there are often disconnects between an employer and employee understanding/interpretation of what is available within a particular workplace (at 9-10). Differences of perception are particularly likely where there is a lack of transparency in, or accessibility to, workplace policies (at 11).
One of the hallmarks of Victorian research has been an emphasis on practical policy responses to issues such as flexible partnerships. As with other Australian jurisdictions, the Victorian private profession comprises many independent and distinct legal businesses and workplaces. These range from sole practitioners through to State offices of national and multi-national firms, in city, suburban and country settings. These are businesses where remuneration and other workplace entitlements are often closely held secrets. Victorian research nonetheless manages to develop reports, guidelines and policies that can be applied at every level of the profession. Recent offerings from Victoria include a guide to assessing, selecting, using and evaluating childcare options, and protocols for use when offering flexible work, part-time work, working from home, as well as engaging employee lawyers on a job sharing basis.

A 2008 working paper turned the spotlight on the ‘elephant in the room’ in an examination of working-time patterns of private practice solicitors in Melbourne. They concluded solicitors ‘are caught up in a [billable hours] system that appears remarkably hostile to employee choice and employee-oriented flexibility’. Current ways of working may claim to be ‘gender-blind’, but these researchers argued ‘this is gender equity in a formal, strictly limited sense … women are incorporated only on narrow terms, in which they are allowed to seek to measure up to the traditional norm of the ‘ideal worker’, void of external ties and freely available to the employer’.

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113 Victorian Women Lawyers (Jan Barrett for the Community Child Care Association of Victoria on behalf of Victorian Women Lawyers), *Child Care is a Family Issue – A guide to assessing, selecting, using and evaluating childcare options for families* (2006).
114 Victorian Women Lawyers, Protocol – Flexible Working Hours, Protocol – Part Time Work, Protocol – Working From Home, and Protocol for Job Share (Employee Lawyer) <www.vwl.org.au> at October 2007. It is clear from research done in Victoria and elsewhere that job sharing remains the least utilised, and perhaps most problematic, of the various non-traditional or flexible working options and I will return to this in Chapter 5 on workplace flexibility.
116 Ibid, 39. The authors argued the ‘rigidity of current patterns’ is ‘generated by new forces sweeping through the [legal] industry’. They found modernisation linked to the rise of the large corporate firms dovetailed with ‘a specific business model aimed at maximising profit through increased leverage of employees’. The issue of billable hours in the Queensland context is considered in detail in Chapter 5, Section 5.6 In Search of Lost Time, p 5-20.
117 Above n 115, 39. This is a breeding ground for discriminatory attitudes when women (particularly those with family or caring responsibilities) ‘fail’ to conform to the prevailing, and privileged, norm.
The considerable body of work in Victoria, and in New South Wales, acknowledges that there are serious private practice problems and challenges that must be faced in order to benefit individual solicitors, their firms, their clients and the community generally. The work done in the other States, while perhaps of lesser scope and depth, echoes these views.

3.7.3 WESTERN AUSTRALIA

In the late 1990s, the Women Lawyers of Western Australia joined forces with the Law Society in that State to examine the reasons lawyers were leaving the private profession, and to propose ways in which the retention of lawyers might be improved, with the final report recommendations in two categories. One category for action was identified as lying within law firm management, with specific management policies and practices needed to create legal workplaces that were ‘more diverse, inclusive, supportive and flexible’. Skilled people management was seen as integral to improving the quality and balance of legal lives to ensure ‘both men and women lawyers can choose to be fully participating parents and citizens’.

It was acknowledged that at least some Western Australian law firms had instituted mentoring arrangements, and were taking issues of sexual harassment ‘more seriously’. However, women were more likely to believe that sexist language and instances of sexual harassment were not dealt with appropriately. The report found that ‘[l]aw firms were seen as generally unhappy places’, and that ‘larger than

Such working patterns are bad for all practitioners who face pressured and constant demands. The researchers concluded although arguments for change are compelling; the essential culture change cannot occur without a shift in the ways private practice is organised. Also see: Sommerlad, Hilary and Sanderson, Peter, *Gender, Choice and Commitment – Women solicitors in England and Wales and the struggle for equal status* (1998). These authors wrote at length of the ‘cultural inertia’ of the profession; and the ‘tenacity of this [legal workplace] culture’ – for example: at 10, 259, 119 ff.

Law Society of Western Australia and Women Lawyers of Western Australia, *Report on the Retention of Legal Practitioners, Final Report* (March 1999) 2. (The study involved an exit survey of 100 lawyers and in depth interviews with a sample of 21.) Firstly, the report writers saw it as vital that the profession itself had a clear vision of the desirable aptitudes for, and attitudes about, private legal practice, and that these should be tested more rigorously at both school and/or career counselling, and law school entry, levels. I refer to this briefly in the context of motivations to become lawyers – see: Appendix 6.

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Ibid, 7.

Ibid.

Ibid.

Ibid, 30. See: Queensland women’s use of negative workplace descriptors in below Table 3.8: Q23 – Negative views of legal workplaces, p 3-36.
expected numbers of lawyers’ were exiting the private legal profession, ‘particularly early in their careers’.  

While lamenting the loss of any talented young individuals, the West Australian authors pointed out that ‘a disproportionate number’ of those leaving were women, with a concomitant loss for the community as it left the profession reflecting ‘a rather narrow segment of society’.  

They urged, as a first step, ‘an acknowledgement that a problem exists’. 

3.7.4 SOUTH AUSTRALIA AND TASMANIA

I am unaware of any formal research or consultancy work in respect of women lawyers within the South Australian profession. On the measures I have used to construct Table 3.7, South Australia leads the nation in the percentage of women (47.10 percent) members of the legal profession. The Law Society’s 2007 annual report recorded that its Women Lawyers Committee members ‘were clearly identifying barriers to [women’s] career paths and actively seeking solutions’, with ‘[t]ax deductibility of child care’ firmly on the agenda.

In 1996 the Women Lawyers Association of Tasmania engaged consultants to research, among other things, whether there was a discrepancy between the number of women law graduates and the levels of seniority women achieved within the profession, and whether there were negative gender-based influences on women’s

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123 Above n 118, 40.
124 Ibid.
125 Ibid, 41. In 2003, then High Court Justice Michael Kirby referred to the ‘alarming’ salary differential between male and female lawyers and the ‘sometimes off-putting’ culture of legal workplaces. He said: ‘Some women solicitors in Perth have told me that even those who have no children do not advance at the same rate as men. Men are offered partnerships so that the firm “will not lose them”. With women, there is commonly an assumption that their careers will be interrupted anyway … Attitudes of condescension and hostility must be identified so that things can improve”. See: Kirby, Michael (Justice), ‘Women in Law – Doldrums or Progress?’ (Speech to Women Lawyers of Western Australia, Perth, 22 October 2003).
127 Refer above Table 3.7: Women in practice and professional governance, p 3-23.
128 As was ‘concern at the low numbers of women appointed to Courts and tribunals’ – see: Law Society of South Australia, 2007 Annual Report (2007) 51.
career progression. The researchers found women were ‘seriously under-represented at principal level in private practice’.\textsuperscript{129} Nearly 60 percent of respondents stated gender had a negative career impact, while 75 percent believed pregnancy and child rearing adversely affected legal careers.\textsuperscript{130}

The Tasmanian report writer concluded that the ‘historical argument’ (i.e. with the passage of time women will reach senior ranks) was insufficient to explain the under-representation of women at those levels, and posited ‘prevailing culture and work practices’ as the key reason.\textsuperscript{131} This manifested in systemic discrimination through embedded work practices that militate against combining profession and parenthood; outmoded management that constrain women’s career choices and aspirations; and active discrimination against women based on stereotypical assumptions they are less likely to be permanent workers and will be less committed.\textsuperscript{132} The barriers to change were identified as existing professional culture and work practices, including ongoing incidences of sexual harassment.

In 2003, the Tasmanian Attorney-General spoke of the need to improve gender equity at all levels of the legal profession, proposing that governments ‘take the lead in effecting culture change in the profession’.\textsuperscript{133} In a brief member survey that same year, Tasmanian women lawyers expressed a ‘great deal of concern about flexible work hours, paid maternity leave, promotion prospects and/or career development’.\textsuperscript{134}

\textsuperscript{129} Even when allowance was made for their historically low rates of entry to the law – see: Goodluck, Jane (Prepared for the Women Lawyers Association of Tasmania by Ireland and Goodluck Corporate Consultants), \textit{Women working in the Legal Profession in Tasmania: Final Report} (1996) 1. (From a database of all women law graduates and practitioners, 160 questionnaire responses were received and 51 in-depth interviews were conducted.)

\textsuperscript{130} Ibid. There was also evidence to suggest women could best achieve principal status by founding their own legal firms (at 2).

\textsuperscript{131} Ibid. 2.

\textsuperscript{132} Ibid.

\textsuperscript{133} This was in a context of a joint sponsorship with Victoria of a recommendation to the Australian Standing Committee of Attorneys-General (SCAG) to address gender imbalances in the legal profession. The thrust of the recommendation was around the achievement of equitable briefing outcomes to permit ‘greater access nationally to Government work for female lawyers’. See: Jackson, Judy (Attorney-General) ‘Equal Opportunity in the Legal Profession’, media release issued by Tasmanian Government Communications Office, 14 November 2003.

\textsuperscript{134} Women Lawyers Association of Tasmania, (2003) 3 (July) \textit{Get Connected}, 1.
3.7.5 QUEENSLAND

In October 2008, the Queensland Law Society (QLS) announced a collaborative venture to ‘investigate work-life balance issues’. Such an initiative is a welcome engagement of the peak professional body with workplace issues. However, I argue this can be no more than a superficial shift in emphasis unless the profession also tackles underlying bias and discrimination within the profession.

In 2003 the Society’s Equalising Opportunities in the Law (EOL) Committee sent a Membership Survey to all Queensland solicitors. The survey explored issues such as reasons for any periods out of practice, experiences of harassment or discrimination, and whether a practitioner’s workplace applied equal opportunity principles. This survey attracted 2,536 responses, but no findings were available until late 2006.

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135 Hede, Andrew and Haddon, Barbara, ‘Do you want better work-life balance?’ (2008) (9) (October) Queensland Law Society Proctor 29. The authors are a professor of management and a PhD candidate from Sunshine Coast University. They invited solicitors to participate in an on-line survey. The survey will test a model developed by the authors with a view to an eventual report back to the profession that allows solicitors to ‘develop an action plan … to enhance their career and personal development’ (at 30). The results were not available as at February 2009.

136 Another key source of Queensland based research has now arisen through the creation of the independent regulator, the Queensland Legal Services Commission (refer: Chapter 1, Section 1.4 Significance with a Queensland Focus, p 1-8, esp p 1-9 n 39). The LSC has already carried out a number of initiatives and looks to be a fruitful source of professional research into the future. The Commission works in partnership with Griffith University Socio-Legal Research Centre to conduct the ‘Lawyers, Clients and Business of Law Symposium’ series, bringing together legal practitioners and legal academics and regulators ‘to provide a forum for discussion on issues of topical importance to the legal community’. It also conducts the ‘Women in the Law in Queensland’ project in collaboration with Dr Francesca Bartlett of the University of Queensland ‘following the LSC’s consistent observation from routine analysis of its database that women solicitors are less than a third likely to have complaints made about them than are male solicitors’. I refer to work by Bartlett and by Bartlett and Lyn Aitken in Chapter 4 – see: Chapter 4, Sub-Section 4.4.1 The Madonna, p 4-17, esp 4-19 at n 64. The LSC is (early 2009) preparing to conduct survey research on ‘Civility and Professionalism’, including aspects of discrimination, harassment and bullying. For ongoing details of the work of the LSC see: <http://www.lsc.qld.gov.au/>

137 In addition to routine questions about: years of practice, size of firm, areas of practice.


One women typified concerns expressed by others that an initiative such as this survey was not given priority by the Law Society – there is a survey and data there that can be analysed but [the Society] have not prioritised or given funding to that. I find that extremely disconcerting given some of the things that the Law Society is quite happy to fund. Social functions are being funded. Committees are
The survey data disclosed 595 incidents of workplace discrimination. Women were disproportionately represented in reports of discrimination based on gender, age and family responsibilities. Of the 381 individuals who indicated they had been directly affected by workplace discrimination, only 18 reported having lodged any formal complaint.\textsuperscript{140}

Participants in my research survey were asked to select a ‘positive’ or ‘negative’ word that best described their particular workplace.\textsuperscript{141} In some cases a strong majority of women agreed with their brothers-in-law that their workplaces merited positive appellations, but it was women who were significantly more likely than their male colleagues to describe their workplaces in negative terms.\textsuperscript{142} When given the opportunity to nominate other descriptors in addition to, or instead of, terms listed in the survey, women were again significantly more likely to describe their workplaces in negative terms\textsuperscript{143} such as secretive, hierarchical, very insular, or manipulative (in terms of unfulfilled promises of promotion).\textsuperscript{144} The following Table 3.8 summarises the survey data.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Term} & \textbf{Percentage} \\
\hline
hostile & 7\% F, 0\% M \textit{MW-U=4048.00 Z=-2.5357 pf=0.011} \\
lonely & 29\% F, 14\% M \textit{MW-U=3738.00 Z=-2.4635 pf=0.014} \\
competitive & 39\% F, 22\% M \textit{MW-U=3896.50 Z=-2.5285 pf=0.012} \\
unfair & 17\% F, 7\% M \textit{MW-U=3691.00 Z=-2.1144 pf=0.035} \\
\hline
\end{tabular}
\end{table}

Women were significantly more likely to select –

\begin{itemize}
\item \textbf{hostile} (7\% F, 0\% M) \textit{MW-U=4048.00 Z=-2.5357 pf=0.011;}
\item \textbf{lonely} (29\% F, 14\% M) \textit{MW-U=3738.00 Z=-2.4635 pf=0.014;}
\item \textbf{competitive} (39\% F, 22\% M) \textit{MW-U=3896.50 Z=-2.5285 pf=0.012;}
\item \textbf{unfair} (17\% F, 7\% M) \textit{MW-U=3691.00 Z=-2.1144 pf=0.035.}
\end{itemize}

\textsuperscript{143} \textit{MW-U=4.5000 Z=-2.0494 pf=0.040}

\textsuperscript{144} At Survey Q23 from: F111(S), F78(S), F55(S), and F48(S) respectively.
I argue that while the QLS has approached issues that affect women’s status within the profession, it has not really engaged with those issues in a direct and meaningful way. It has not given any public commitment to examining or addressing workplace inequities exposed by the 2003 EOL Committee membership survey; and specifically it has not sought to do direct follow-up research to examine the existence and extent of such issues more than five years later. To drive change, these initiatives need to have the commitment and imprimatur of the governing Council as has occurred in other Australian States. Individual solicitors and firms also need to engage with modern management practices in a profession where nearly 40 percent of women and men reported their workplace was old fashioned rather than innovative.145

145 Findings from Survey Q23 as set out in above Table 3.8: Q23 – Negative views of legal workplaces.

Table 3.8: Q23 – Negative views of legal workplaces

<table>
<thead>
<tr>
<th>Q23 – Workplace descriptors</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Hostile or</td>
<td>7</td>
<td>7.07</td>
</tr>
<tr>
<td>Friendly</td>
<td>92</td>
<td>92.93</td>
</tr>
<tr>
<td>Total</td>
<td>99</td>
<td>100.00</td>
</tr>
<tr>
<td>Lonely or</td>
<td>29</td>
<td>28.71</td>
</tr>
<tr>
<td>Supportive</td>
<td>72</td>
<td>71.29</td>
</tr>
<tr>
<td>Total</td>
<td>101</td>
<td>100.00</td>
</tr>
<tr>
<td>Competitive or</td>
<td>40</td>
<td>38.83</td>
</tr>
<tr>
<td>Cooperative</td>
<td>63</td>
<td>61.17</td>
</tr>
<tr>
<td>Total</td>
<td>103</td>
<td>100.00</td>
</tr>
<tr>
<td>Unfair or</td>
<td>17</td>
<td>17.53</td>
</tr>
<tr>
<td>Equitable</td>
<td>80</td>
<td>82.47</td>
</tr>
<tr>
<td>Total</td>
<td>97</td>
<td>100.00</td>
</tr>
<tr>
<td>Routine or</td>
<td>61</td>
<td>62.24</td>
</tr>
<tr>
<td>Exciting</td>
<td>37</td>
<td>37.76</td>
</tr>
<tr>
<td>Total</td>
<td>98</td>
<td>100.00</td>
</tr>
<tr>
<td>Old-fashioned or</td>
<td>37</td>
<td>39.36</td>
</tr>
<tr>
<td>Innovative</td>
<td>57</td>
<td>60.64</td>
</tr>
<tr>
<td>Total</td>
<td>94</td>
<td>100.00</td>
</tr>
</tbody>
</table>
When overseas studies are considered in conjunction with the Australian research there is a clear message for the Queensland profession that it is unlikely to be immune from the discriminatory and exclusionary practices that afflict other legal professions. Other research reinforces the need to name the problem and to encourage ongoing monitoring of a range of issues. It provides useful theoretical and practical frames through which to view local concerns, and ways to benchmark the Queensland profession. Importantly, it generates ideas for ways the profession can be made more accommodating to the real everyday needs of its practitioners. In the next Section I will consider some of the relevant research from Canada, the United Kingdom, New Zealand, and the United States of America.

3.8 LESSONS FROM ABROAD

The research I highlight here examines the situation of women in the legal profession in some overseas jurisdictions. I will particularly focus on research findings that relate to my own key research areas of discrimination and exclusion, workplace flexibility, and professional success. I will also consider some of the theoretical underpinnings relied on by international researchers.

3.8.1 CANADA

A 1995 study147 analysed findings in the context of two theories of legal practice: human capital theory and gender stratification theory.148 The first of these seeks to explain the development of ‘human capital’ by law firms and individuals as a direct result of the investments they choose to make in life and work.149 Human capital

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146 Canada opens this overview of the international experiences of women lawyers as it holds a special relevance for Australian lawyers due to the many parallels between the two countries. For a summary of the similar historical, political, economic, institutional, cultural and social factors, see: De Brennan, Sebastian, ‘Legal Education in Australia – Is it time to take a (Maple) Leaf out of Canada’s book?’ 4. <www.asialink.unimelb.edu.au/data/assets/pdf_file/0003/8157/SDeBrennan.pdf> at 18 January 2008.

147 Hagan and Kay, above n 42. These two researchers acknowledged the valuable information and insights they gained from their involvement in two earlier studies: Law Society of Upper Canada Legal Profession Committee, Transitions in the Ontario Legal Profession (1991); Wilson, Bertha (Justice) Touchstones for Change - Equality, Diversity and Accountability. Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession (1993).

148 Ibid, 12.

149 Ibid. The United States Supreme Court had previously drawn heavily on the spiritual and constitutional dimensions of this approach – see: Bradwell v. Illinois 83 U.S. 130 (1872) where the Court found the ‘domestic sphere’ ‘properly’ belonged to ‘the domain and functions of womanhood’.
theory in its ‘chosen spheres’ manifestation infers that ‘if women made similar choices and efforts as men, they would achieve success that is comparable’.\footnote{As opposed to ‘choices’ women make to have children and to ‘invest’ in family and childcare. Economist, Gary Becker, asserted that individual lawyers’ choices or investments are ‘often shaped by biological and socialized differences of gender’. Becker acknowledged ‘discrimination could produce differences through male exploitation of the comparative specializations of women in the home and men in other work’ thus allowing for ‘restricted’ as opposed to ‘chosen’ spheres – see: Hagan and Kay, above n 42, 13. (For a critique of Becker’s work see: Bergmann, Barbara R, ‘Discrimination through the Economist’s Eye’ in Crosby, Faye J, Stockdale, Margaret S and Ropp, S Ann (eds), Sex Discrimination in the Workplace – Multidisciplinary Perspectives (2007) 213, 214-216.)} By contrast, the gender stratification theory allows for an emphasis on ‘restricted spheres’.\footnote{As espoused by economist Gary Becker – see: above n 150.} This second approach suggests that the legal profession ‘inefficiently penalises the comparable efforts of committed women who, often in spite of constraining demands of family and inadequate rewards in occupational advancement, invest heavily in their careers’.\footnote{Hagan and Kay, above n 42, 13. (For a critique of Becker’s work see: Bergmann, Barbara R, ‘Discrimination through the Economist’s Eye’ in Crosby, Faye J, Stockdale, Margaret S and Ropp, S Ann (eds), Sex Discrimination in the Workplace – Multidisciplinary Perspectives (2007) 213, 214-216.)}

Some solicitors I interviewed in the course of my Queensland research spoke of investment in careers and the ability for women to make the same choices as men, as well as the willingness of firms to invest in their human capital. There was no, or very limited, understanding of the fact that women’s investments may not be identical to men’s, but that they may well be ‘comparable’.\footnote{As is the case in Queensland, Hagan and Kay, above n 42, identified a range of issues (at vii) that were problematic for Canadian women lawyers, including barriers to promotion and higher income levels, and ongoing needs to manage career and family. They found gender a significant predictor of partnership achievement and income levels. They went further (esp at 73ff) and suggested women have been ‘used’ by a (male dominated) profession that has found women to be more ‘compliant’. This translated into women being offered lower levels of compensation and mobility (at 33-34), while at the same time being welcomed to the (junior) professional ranks as the profession was expanding to meet increased demands (at 32).} John Hagan and Fiona Kay argued that only gender stratification theory meaningfully contributes to explaining why gender differences consistently manifested in their exploration of lawyers’ career experiences, partnership achievements, remuneration levels, work-life balance and reported work satisfaction levels.\footnote{A critique of Hagan and Kay’s study questions whether job satisfaction can be easily assessed, or understood, by simply considering departures from the profession. I agree that this is too simplistic, arguing instead that departures are a useful measure of the ‘health’ of the profession and a sign that more in-depth research is needed to better understand what reasons (professional and personal) motivate those exiting the profession. See: Hull, Kathleen E and Nelson, Robert L, ‘Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions’ (1998) 23 Law and Social Inquiry 681, 686.} It would be useful for Queensland to take up the

\footnote{Hagan and Kay, above n 42, focused on the use of ‘biological differences to build an explanation of why women are often less successful than men in law’ (at 13).}
challenge to view gender inequality as a structural feature of the solicitors’ branch of the profession, and to test workplace practices against that proposition. One issue raised by my interview participants was the growth of salaried (as opposed to equity share) partnerships and concerns that women may be significantly more likely to be sidetracked into those options. Salaried partnerships give the outward trappings of partnership, which traditionally attracts status and peer recognition, but can deny any effective voice in top-level decision making within firms.\(^{155}\)

Canadian research demonstrates that access to leadership opportunities is linked with our understandings of success within private legal practice,\(^ {156}\) and that those women who do achieve ‘success’ have not necessarily achieved some level of equality with their male counterparts, but may have actively chosen to conform to expected and accepted male norms of behaviour and values.\(^ {157}\) Jennifer Hatfield described the dilemma identified by some women in my own research as they lay claim to the benefits of success as constructed by their male colleagues, while seeing the very bases of those masculinist constructions as inherently problematic.\(^ {158}\)

Motivations for studying law, experiences with discrimination and sexual harassment, and managing the pressures of the profession with the demands of an outside life have been areas of inquiry in my research. They were also canvassed in a 2001 Canadian study\(^ {159}\) that acknowledged the general workforce, not just the legal profession, is often a difficult place for workers with additional caring responsibilities, but found

\(^{155}\) While I have canvassed this in terms of ‘alternative’ career paths, it is not an issue that I specifically sought out. It is clear from my research that salaried partnership is a significant contemporary and future issue for Queensland solicitors, and in need of detailed research and debate. For some women at least, salary partnerships were a perfectly acceptable career choice, as the following interview excerpt demonstrates –

\textit{A}: I’ve only ever been a salaried partner, and that was my choice. I didn’t want to take equity. But that never stopped me from being part of the decision making process.
\textit{Q}: So you think that that’s probably a very individual experience in different firms as to what does, or doesn’t, come with that title?
\textit{A}: That’s right and that’s something that you should negotiate – It(f)48: 20 [woman – 40s – former (salaried) partner, now consultant – metropolitan]


\(^{157}\) Ibid, 71.

\(^{158}\) Ibid, 165.

\(^{159}\) Brockman, above n 43.
women are disproportionately burdened’. 160 Joan Brockman’s examination of the profession’s long hours and pressure to create billable hours 161 ‘gives insights into why law, in particular, perpetuates the “workaholic” treadmill’. 162 Brockman found that discrimination and sexual harassment are still specifically used to disadvantage women lawyers. 163 A significant proportion of both women (24 percent) and men (26 percent) in her research were dissatisfied. 164 Both her female and male participants were equally likely to report work-related stress as their major dislike. 165

Australian Margaret Thornton notes the inclusion of men in Brockman’s research and sees the men as a useful ‘control group’ against which women’s legal practice experiences can be assessed. Thornton argues Brockman’s work adds considerable weight to the proposition that the ‘glass ceiling’ is not something that women encounter towards the upper rungs of their career ladder, but rather it is something that ‘seems to hover over them from the moment they enter the profession’. 166 In 2003, Kay and Brockman joined forces and concluded that ‘[d]iscrimination, in both overt and subtler forms, persists in the Canadian legal profession’. 167 Their data demonstrated women continue to lag behind in promotion, pay levels, and status, remaining ‘on the margins of power and privilege’ 168 within their chosen field of endeavour.

Not only does the Canadian experience demonstrate the importance of researching

160 Beaman, Lori G, ‘Book Reviews’ (2002) 14 Canadian Journal of Women and the Law 221, 222. Beaman (223) raises the question as to whether the Canadian legal profession’s treatment of women within its ranks resembles the ‘old liberal paradigm of equality, which sees women’s equality as being possible only as long as women are the same as men’. She considers a stronger theoretical base for Brockman’s analysis would assist in examining some broader issues that inevitably emerge from a study of this kind, querying (224) ‘How and why do women remain underprivileged in a privileged profession?’

161 Brockman, above n 43, 37-38.

162 Ibid.

163 Ibid, 197. Also at 199 – 36% of women in Brockman’s study reported they had been sexually harassed since entering the legal profession.

164 Ibid, 197.

165 Ibid.


168 Ibid, 49.
issues affecting women and men within the legal profession, it also provides valuable
instruction in the need to follow up on findings and to implement meaningful change.
Three Canadian law firms held educational seminars on gender equality as a direct
response to research findings of ongoing problems for women in their ranks. The
seminar facilitator concluded that such seminars provide useful information, but that
they ‘cannot challenge the fundamental rationale of law practice per se’.¹⁶⁹

She found that the nature of legal work and its demands effectively sidelined other
goals ‘such as those of gender equality’.¹⁷⁰ Her comments strongly reinforce the
argument I have made for the maintenance of a gender narrative in research within the
Queensland profession.¹⁷¹ Based on my own experiences as a trainer, I am aware that
businesses can fixate on business goals of compulsory professional development and
training, and lose focus on equity goals (such as retention of female employees and a
broad understanding of why employees leave). Unless equity goals are set, unless a
gender narrative is maintained, change will not occur and new ways of working will
not be forged.

Jean McKenzie Leiper interviewed more than 100 Canadian women lawyers,
exploring issues around the women’s choices of law as a career, how those careers
take shape in the context of the women’s ‘other lives’ in family and community
settings, their achievements, and whether they would choose a legal career if starting
again.¹⁷² She described Canadian women entering the profession in greater numbers
than men, but identified a two tiered professional profile with men more likely to
advance to senior and decision-making levels while women remain in lower ranks.¹⁷³
Many women lawyers continued to experience sexual harassment and sex based
discrimination while remaining ‘keenly aware of the male values that shape life in
many large firms, and … intent on avoiding the gender inequities that often hide
behind the most eloquent mission statement’.¹⁷⁴ Women who were lawyers and

¹⁶⁹ Mossman, Mary Jane, ‘Engendering the Legal Profession: the Education Strategy’ in Schultz and
Shaw (eds), above n 50, 84.
¹⁷⁰ Ibid.
¹⁷¹ See: Chapter 1, Section 1.3 Maintaining a Gender Narrative, p 1-6ff.
¹⁷² McKenzie Leiper, above n 44, 4.
¹⁷³ Ibid, 5.
¹⁷⁴ Ibid, 162.
parents reported high levels of conflict between their professional and family roles, with part time work and extended leave usually creating barriers to career advancement. The Canadian women’s identification of ‘a set of unwritten codes that can be particularly problematic for women’ mirrors the invisible rule book readily identified by some Queensland practitioners.

The potential disadvantage inherent in part-time work, family responsibilities, and a lack of access to senior roles, were acknowledged to be patterns similar to other male-dominated professions, but McKenzie Leiper argues they are ‘particularly pronounced in the practice of law’. She suggests that the unwritten codes that govern –

- expectations about hours on the job, access to the best files, informal meetings, or unspoken views about pregnancy and childbirth... become codes in themselves, guarded by established members of the profession and open only to persistent outsiders who succeed in deciphering the signals... [such that] women’s legal careers hinge on their access to social and cultural capital.

In 2006, Canadian women lawyers remained more likely to leave legal practice, and remained more likely to cite a lack of work life balance as the cause. It was acknowledged that many legal practice workplaces ‘now offer flexible and part time alternatives’, but those accommodations were seen as ‘likely to negatively affect career advancement and opportunities’.

The social and cultural capital held by a privileged class or group can feed, and be fed by, the enduring principles which produce, and re-produce, the practices of a class or group. It was these enduring principles, Pierre Bourdieu’s concept of ‘habitus’,

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176 McKenzie Leiper, above n 44, 5.
177 Ibid 6.
178 The notion of an ‘invisible rule book’ was canvassed with most interview participants and it informs the thesis generally.
179 Ibid 5.
180 Ibid 6.
182 Ibid, 54.
183 See: Jary and Jary, above n 48, 257.
that informed the landmark study of English and Welsh solicitors a little over a
decade ago.\textsuperscript{185} I turn now to that research carried out in the United Kingdom.

\textbf{3.8.2 UNITED KINGDOM}

The concept that ‘objective structures never work in the abstract but exert themselves
in the habitual disposition of individuals’\textsuperscript{186} (habitus) was utilised by Hilary
Sommerlad and Peter Sanderson in their 1998 study of English and Welsh solicitors
in which they argue that a legal ‘habitus’ begins as a process of acculturation in law
schools ‘involving depoliticisation and the marginalisation of women’s
perspective’.\textsuperscript{187}

They point out that the ‘choice’ women can make about their careers continues to be
circumscribed by ‘the construction of motherhood and the prevailing social
arrangements for child care’.\textsuperscript{188} They argue ‘the concept of commitment is itself
gendered’ based as it is on notions of separate public and private spheres and the
traditional, or appropriate, roles for men and women within those spheres.\textsuperscript{189} They
examine retention strategies for women lawyers, concluding that the problems lay
with the ‘ethos, working practices and career structure of the profession itself’.\textsuperscript{190}

Sommerlad and Sanderson were open to the possibilities that men socialised and
ccaught up within this culture could also find it difficult to ‘deviate from the norm even
where they find aspects of it uncongenial in the extreme’.\textsuperscript{191} This view was strongly
 echoed in my own research. One male solicitor I interviewed spoke out against the
prevailing culture, but in order to survive he opted to \textit{play the game} and convince
other (male) colleagues that he was indeed \textit{one of the lads}. He found his camouflage

\textsuperscript{185} Sommerlad and Sanderson, above n 117.
\textsuperscript{186} Lemert, above n 184, 441.
\textsuperscript{187} Sommerlad and Sanderson, above n 117, 103. See also: review by Thornton, above n 166, 626.
Sommerlad has also argued that the acquisition of ‘habitus’ is ‘highly problematic for those with the
“wrong” background’ – see: Sommerlad, Hilary, ““Becoming” a Lawyer”: Gender and the Processes of
Professional Identity Formation” in Sheehy, Elizabeth and McIntyre, Sheila (eds), \textit{Calling for Change –
\textsuperscript{188} Sommerlad and Sanderson, above n 117, 2.
\textsuperscript{189} Ibid, 3.
\textsuperscript{190} Ibid, 11.
\textsuperscript{191} Ibid, 19-20.
worked exceptionally well.192

Women in the solicitors’ branch of the profession in England continue to struggle with outdated attitudes and often hostile workplaces. Clare McGlynn details a history of female disadvantage in the academy, the judiciary, and the profession.193 She suggests it is no longer the marriage bar, but the baby bar, that is used to impede women’s progress.194 Pregnancy is the ‘problem’ and hence women are the ‘problem’ in ways that continually reinforce their difference and otherness. Commitment is something men have and women do not, and probably never will as long as commitment continues to be constructed in specifically gendered terms.195 Even if women have invested considerable human capital in their careers, they are unlikely to

192 I(m)41: 31, 32 [man – 30s – employed solicitor – was metropolitan, now regional].
193 McGlynn, Clare, The Woman Lawyer – Making the Difference (1998). One of the quotations that opens her chapter on solicitors is from a 1920 publication (Concerning Solicitors) about the solicitors’ branch of the profession. It eloquently expresses the view that both branches of the law provide ‘an excellent opening [for] a celibate woman with exceptional talent... There can be no doubt that at least one per cent of women are quite as intelligent as any man’ (at 94). This is perhaps more optimistic than the views of a Lord Chancellor of the time, who suggested if women were unable to fulfil their ‘proper’ role by marrying, perhaps some scheme could be derived to enable them to become ‘mothers of mighty nations’ ‘in other parts of the British Empire’. While they may not have been shipped out like convicts to the colonies, the message was resoundingly clear that women who wished to exercise their innate skills and talents were a class of intellectual convicts fit to be deported and ‘sentenced’ to motherhood in the far flung reaches of the Empire.
McGlynn goes on to detail the ongoing resistance to women’s professional entry as solicitors long after the Sex Discrimination Act 1919 dismantled the overt obstacles. She describes the concerns held for women because those ‘who did exercise their brains were putting their very health at risk, and in particular their fertility ...’ This conjures shadows of the late 19th century when Charlotte Perkins Gilman wrote her famous novella The Yellow Wallpaper based on her own chilling experiences of an isolated marriage and cravings for intellectual stimulation. In her grim tale, even pen and paper were denied the narrator lest she overtax her delicate constitution. She went slowly and relentlessly insane. See: Gilman, Charlotte Perkins, The Yellow Wallpaper (first published 1892) (1981).
What is perhaps even more remarkable about these attitudes towards, and literature about, women, is that these ideas still have currency in any examination of the place of today’s women within their chosen profession. For example: Sommerlad and Sanderson cite the Lord Chancellor’s speech against a Bill to allow women entry to the profession; and (then) High Court Justice Mary Gaudron quoted from Concerning Solicitors when launching Australian Women Lawyers in 1998. (And this also goes some way to explaining why, more than 100 years later, authors such as Perkins Gilman remains in print.)
Of course, it can be argued that issues such as these are only quoted to demonstrate how far women have come in the legal profession and that such levels of discrimination no longer block women’s path to professional success. However, there is ample evidence that those views have not died out as more and more women enter the law. In 1995-1996, the then president of the English Law Society said he did not see any barriers to women’s advancement ‘apart from those they choose themselves or those that are inherent in their biology’ (emphasis mine) (cited in McGlynn, at 98). In 1997 The Guardian newspaper reported that one woman solicitor, having told her employer she was pregnant, was advised to have an abortion (cited in McGlynn, at 100). In a 1992 article, another woman reported being asked in an interview whether she would consider abortion as a career advancing strategy (cited in McGlynn, at 100).
194 McGlynn, above n 193, 100-103.
have enough cultural capital to make the grade. ‘So long as it is a male club and culture to which women seek entry, they will only ever be honorary, not full, members’. McGlynn cautions against a simplistic generalisation of women’s experiences, but asserts there does appear to be a ‘common thread throughout the profession’ which is ‘the undervaluing and marginalisation of women solicitors’.

In a 2000 review article, McGlynn pays tribute to the understanding and analysis of human capital and cultural capital brought to bear in the work of Sommerlad and Sanderson. She suggests that the general dominance of the human capital approach explicates the strength of a campaign for professional equality that is based on the ‘business case’. Simply, the business case argues that morale is boosted and productivity is increased, that the productive use of human resources is maximised, and that legal action by way of complaints of discrimination is avoided, where workplaces adopt equal employment opportunity policies.

The 2003 research into solicitors conducted by the United Kingdom Law Society recognised the benefits and limitations of the business case for equal opportunity workplace practices. A subsequent journal article canvassed both human capital theory and the business case for workplace equality for women in the legal profession. The authors suggested human capital theory does seem to offer opportunity for equality ‘as long as one is able to convince the partnership that one is not female’ while the business case will deliver benefits to women ‘as long as it

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196 Ibid, 105.
197 Ibid, 113.
198 McGlynn, Clare, ‘The Business of Equality in the Solicitors’ Profession. Review Article’ (2000) 63 Modern Law Review 442, 444-446. In England, as elsewhere, the business case embraced a gender component when it became apparent there was a critical shortage of solicitors at a time of rapid expansion in the profession (at 454).
199 Ibid, 446-448. McGlynn’s argues there are studies both for and against the usefulness of a business case strategy. Those who argue in its favour of necessity draw heavily ‘on an appropriate recognition of women’s human capital’ (at 454) bypassing the cultural values and norms which construct women’s experiences of lawyering. It is these latter factors which Sommerlad and Sanderson have demonstrated as being crucial in our understanding of women’s ‘marginalised status’ (at 453).
remains economically rational to do so.\textsuperscript{202} I argue that, as a baseline approach, the business case has value in the Queensland context if it turns a focus on the issues of workplace opportunity and the need for compliance with existing anti-discrimination legislation; and that policies, if properly drawn, maintained and promulgated, provide some framework for acceptable workplace behaviours and systems.

I agree the business case ‘does not … deconstruct the structures and practices in law firms to examine the extent to which they act against women and other groups’ nor does it attempt ‘to reconfigure the whole notion of legal practice’.\textsuperscript{203} This criticism of the business case also dovetails with the arguments I make against the prevailing legal professional discourse of client service in Chapter 5.\textsuperscript{204} Lisa Webley and Liz Duff draw attention to the commodification of the private legal profession and urge a new, values based approach. They accept that business efficiency and profit are significant, but argue these should be ‘one value – but not the core value – of the profession’.\textsuperscript{205} Their research shows that ‘to some extent’ men, as well as women, want to see change in the way legal work is managed.\textsuperscript{206}

The use of ‘quotas and decision-making preferences in recruitment and promotion in favour of women’ (and other under represented groups) in order to ‘eradicate current patterns of discrimination and disadvantage’ has been strongly urged as a way to overcome problems in the Anglo-Welsh legal professions.\textsuperscript{207} Donald Nicholson argued that success in the law was ‘not equally open to all’\textsuperscript{208} within its ranks, and that the profession had legal, and moral, obligations not to discriminate. His proposition that ‘current indicators of merit have a discriminatory impact which reflects a subjective choice’\textsuperscript{209} is persuasive when he links the ability to obtain work

\begin{footnotesize}
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\item \textsuperscript{202} Ibid, 381.
\item \textsuperscript{203} Webley and Duff, above n 201, 380-381.
\item \textsuperscript{204} See particularly at p 5-45 ff.
\item \textsuperscript{205} Webley and Duff, above n 201, 401.
\item \textsuperscript{206} Ibid, 402.
\item \textsuperscript{207} Nicolson, Donald, ‘Affirmative Action in the Legal Profession’ (2006) 33 (1) \textit{Journal of Law and Society} 109, 109. I do not argue for a similar approach in Queensland as equal opportunity law in Australia has not embraced the notion of numerical quotas. However, I do suggest an awareness of views in other, arguably similar jurisdictions to those in Australia, assists us in both identifying issues to be addressed and a variety of ways to address them.
\item \textsuperscript{208} Nicolson, above n 207, 112.
\item \textsuperscript{209} Ibid, 117.
\end{itemize}
\end{footnotesize}
placements, good file allocation, and mentoring and training opportunities, to social contacts and other subjective grounds,\textsuperscript{210} all designed to ensure comfortable levels of homosocial reproduction for the ‘exclusive club of white, middle class men’\textsuperscript{211} who constitute the profession’s power base.

Findings of ‘gender inequities in the [Scottish] legal profession’ were published in 2000.\textsuperscript{212} A number of female and male law students were surveyed about their experiences of law firm recruitment practices and these outcomes were examined in the context of larger studies of the profession.\textsuperscript{213} One interesting inference drawn by the researchers was that ‘the recruitment process itself ... does not contribute significantly to the bias against women in the legal profession ...’\textsuperscript{214} It is suggested that this is a somewhat naive view of their own data.\textsuperscript{215}

I argue that the recruitment process is a key area for further examination in the Queensland context, particularly in view of some stories related by my research participants and recounted throughout this thesis. As one female law student told the Scottish research team ‘... a lot of interviews are conducted by partners who have little or no personnel experience and consequently the interview process centres on

\textsuperscript{210} Ibid.
\textsuperscript{211} Ibid 109.
\textsuperscript{213} Law students surveyed: female N= 155; male N= 123. They carried out in-depth interviews with 62 Scottish solicitors; and drew on the work done by Sommerlad and Sanderson, above n 117.
\textsuperscript{214} Siann et al, above n 212, 224-225.
\textsuperscript{215} While it was apparent that, at the observable level, women and men underwent similar interview experiences (in terms of length, style, questions asked, number of applications), it is argued their data also demonstrate examples of structural and systemic discrimination within the Scottish legal profession’s recruitment processes. What is most striking is the composition of interview panels. Men were present on all interview panels faced by the aspiring solicitors, but women only appeared on 51 interview boards (at 218). The data also indicate that male job applicants were more likely to be engaged in ‘a lot of discussion’ about sport; while female parents were more likely to be asked ‘specifically about their domestic situation’ than were male parents (at 219-220).
While the authors do not claim any statistical significance for these differences, they are interesting in terms of what is missing, or hidden, in the examination of the recruitment practices. There was no information available as to what took place post-interview. What scoring or assessment method was used by the interview panels? What weighting was given to topics such as sport, school life, and current domestic situation as against other interview topics such as the law, future aspirations and politics and current affairs? What influence did reference checks have in the ultimate employment decision? And what impact did referees have depending on whether or not they were known to and/or shared a similar school/club background with the law firm partner/s?
inappropriate/unfair aspects of the candidate’. Such human resource management issues serve to highlight the insidious nature of entrenched discrimination. This is particularly the case when unquestioned traditional views are combined with little understanding of people management issues and no, or no access to, specific management skills and tools to enable practitioners to manage recruitment and retention issues in an unbiased and equitable way.

3.8.3 NEW ZEALAND
Researchers in New Zealand uncovered familiar themes: women were not moving through to the top echelons of their profession; they were not receiving remuneration equivalent to their male counterparts; they were under-represented in the more lucrative practice specialities; and they were reporting disturbingly high incidences of discrimination and harassment. Writing in 2003, Georgina Murray was dismissive of the suggestion that the mere fact women are now entering New Zealand law schools and the profession in greater numbers will achieve some ‘trickle-up effect’ that will cure the profession of any remaining discriminatory ills.

3.8.4 UNITED STATES
American researchers have found that ‘both male and female attorneys are stressed by

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216 Siann, above n 212, 221.
218 Ibid, 131.
219 Ibid, 129.
220 Ibid, 133.
221 Ibid. Margaret Thornton and Joanne Bagust argue compellingly that the ‘matter of time’ or ‘trickle up’ theory ‘suits the inherent conservatism of the legal profession, which is resistant to both acknowledging the existence of a problem and accepting that remedial action might be necessary.’ See: Thornton, Margaret and Bagust, Joanne, ‘The Gender Trap: Flexible Work in Corporate Legal Practice’ (2007) 45 (4) Osgoode Hall Law Journal 773, 774.
Murray, above n 217, sounds a warning note (at 135) that national shifts in economic and labour market policies will lead to reduced opportunities for women lawyers in the public service (an area of work that attracts women, particularly as it allows them a heightened level of flexibility to accommodate their competing demands from the public and the private spheres). She reports that women are more likely to take up part time work opportunities (at 134). She also suggests that increased entry of women into the profession ‘will result not in an improvement of the situation of women lawyers but rather in male lawyers leaving the profession in favour of more attractive fields’ (at 135). This latter resonates with the views of Carrie Menkel-Meadow on the feminisation of the legal profession – see: Menkel-Meadow, Carrie, ‘Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change’ (1989) 14 (2) Law and Social Inquiry 289.
the competing demands of high-powered workplaces and high-need personal lives’.\(^{222}\)

In one Washington DC study lawyers reported a range of non-work imperatives in their lives: ‘care of elderly parents or a sick partner; personal health issues, particularly those related to stress; religious commitments; volunteerism; and desires to pursue activities such as writing, travel, and athletic competitions’.\(^{223}\) The popular belief that it is always ‘childcare’ that drives the call for flexible work arrangements has been effectively discredited by research in the United States and elsewhere. The Washington report found a direct connection between a lack of balance in legal workplaces and ‘stress-related symptoms, including depression and addiction’, and also lawyers leaving ‘their employer or even the law’.\(^{224}\) The report writers stress the imperative to retain talented and productive lawyers ‘who have experience, skills, institutional knowledge, and client relationships’, and they suggest that the vexed question of lawyer retention ‘may require rethinking the way legal work and schedules are structured’.\(^{225}\)

A great deal of research has been conducted under the auspices of the American Bar Association’s (ABA) Commission on Women in the Profession. Importantly, the ABA sets equity goals for itself, monitors and evaluates progress, and provides feedback and reporting to the public.\(^{226}\) The Commission’s work is ongoing, attracts well-known leaders in legal scholarship\(^{227}\) to conduct research and author reports, and provides a wealth of resources through its web site.\(^{228}\) The tenor of these ABA

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\(^{223}\) Ibid. ‘The Project for Attorney Retention (PAR) is an initiative of the Program on Gender, Work & Family of American University, Washington College of Law, funded by the Alfred P Sloan foundation and supported by the Women’s Bar Association of the District of Columbia. PAR began studying work life issues for attorneys in 2000 with its research on part-time work at law firms in the Washington, DC area. That research resulted in a report that explored why part-time schedules are typically not successful in law firms, and included best practices recommendations for more effective part-time programs’. This information and the report are available from the PAR website <www.pardc.org>.

\(^{224}\) Ibid.

\(^{225}\) Ibid.


\(^{227}\) Such as Deborah Rhode.

\(^{228}\) <www.abanet.org/women/>
reports,\textsuperscript{229} and reports from other, regional, Bar Associations,\textsuperscript{230} echo findings across a range of jurisdictions. Women are leaving the profession at a greater rate than their male colleagues. Lawyers generally report high levels of stress in their workplaces and low levels of control over their work.\textsuperscript{231} Women continue to report discriminatory and exclusionary practices and ongoing sexual harassment. Women remain underrepresented in senior roles and less well paid than their brothers-in-law within the profession. Pregnancy and parenthood mark women out as ‘not serious’ about a legal career and move them to the margins of their profession, where they are not considered for training and development opportunities and promotion.

3.9 A LONG WAY TO GO

Deborah Rhode urged caution against ‘the widespread assumption that barriers have been coming down, women have been moving up, and it is only a matter of time before full equality becomes an accomplished fact’.\textsuperscript{232} This thinking, also evident among a small number of solicitors in my research, encourages inaction by the profession because ‘in time’ any residual problems will disappear. It creates what Rhode described as the ‘no-problem problem’.\textsuperscript{233} Where this attitude prevails, there is great difficulty in even initiating conversations about equity issues, let alone working


\textsuperscript{230} For example: Herman, Lisa Vash, Adam, Lynn M and Meazell, Emily Hammond (Atlanta, Georgia Association for Women Lawyers, Atlanta Bar Association Women in the Profession Committee & Georgia Commission on Women), \textit{It’s About Time – Part-Time Policies and Practices In Atlanta Law Firms. A Joint Study} (February 2004); New York State Bar Association Committee on Women in the Law, \textit{Gender Equity in the Legal Profession – A Survey, Observations and Recommendations} (Report to the House of Delegates) (2002).


\textsuperscript{232} Rhode, (\textit{The Unfinished Agenda}), above n 229, 13-14.

\textsuperscript{233} Ibid. Also reported in: English, Holly, \textit{Gender on Trial – Sexual Stereotypes and Work/Life Balance in the Legal Workplace} (2003) 6.
towards possible solutions. That is why it is so important for Queensland practitioners to be able to enter into open and productive dialogues about the state of their profession and ways that the practice of law can be enhanced for all practitioners.

When we review what lessons might be learned in Queensland from research in other Australian States and overseas, the cultural context of the profession is a constant. The notions of property and privilege must be recognised to understand ongoing discrimination within the private profession legal culture. Simply accusing individuals of prejudice can ‘hide the flipside of prejudice, which is privilege’. Privilege can be described through four key characteristics. Firstly, it is mostly invisible to those that enjoy it, because members of the privileged group have an ‘unmarked status’. They are the group society takes for granted. Secondly, it is normative. Those who enjoy it see their lives as normal and this ‘comes to represent the dominant norm’, and hence ‘the basis for measuring success and failure’.

Thirdly, privilege is naturalised. As long as there is no challenge to a socially constructed basis for gender inequality, ‘people will accept and live with existing inequalities …’ We see a history of the naturalisation of male privilege in the gendered constructions of occupation (e.g. ‘solicitors’ and ‘women solicitors’), and in

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234 English, above n 233, 7.
235 This is well illustrated by Victoria’s Solicitor-General’s description of an incident concerning barristers elevated to Senior Counsel in 2003. A complaint was made that some men should have been recognised earlier, but that women had taken (unfair and unmerited) precedence. See: Tate, Pamela, ‘Keynote Speech to the Women Lawyers Achievement Awards’ (Melbourne, 2 June, 2005). Available Queensland Women Lawyers web site <www.qwl.com.au> at June 2005. Solicitor-General Tate said she did not accept that the mere passage of time and the elimination of overt barriers would lead to an equality of participation in the legal profession (at 5). She said she believed that men held ‘a deeply ingrained sense’ of ‘a right of property over the fruits of the profession’ (at 5). She said, ‘... the legal system, while it might allow women lawyers to have a place, does so on condition that women recognise they owe their place to the grace and favour of men. It follows that they are not to take property which the men believe is rightfully theirs’ (4). Although the focus of my Queensland research is solicitors, findings in other jurisdictions relating to barristers are relevant in terms of cultural attitudes among some male lawyers in particular and within the wider legal profession in general.
237 Ibid, 5-6.
238 Ibid, 6.
239 Ibid, 7.
the gendered assumptions that underpin many management practices.⁴⁰ Fourthly, privilege ‘bestows a sense of entitlement’.⁴¹ It is easy to understand that those who are members of a dominant group are more likely to argue that any resultant inequalities ‘are legitimate and natural’,⁴² and human history to date means that some men continue to expect ‘respect, deference, and service from women’.⁴³

I argue that the profession in Queensland has resisted any conversation around significant professional issues primarily affecting women because they are simply not relevant to a traditionally ‘privileged’ group that can operate successfully in a professional world they have constructed (often because of the support and service they receive from women in their private lives). These issues and themes are still being identified in other jurisdictions. In 2003 the Canadian Governor-General said it was ‘not surprising’ to find women left the legal profession as it would be ‘distinctly uncomfortable’ for many of them ‘to continue to live within a [system] which basically grants them certain privileges from the height of a masculine world’.⁴⁶

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²⁴⁰ Ibid, 7-9. The ‘associations between organisational power and masculinity are embodied … in the size and position of offices, furniture, “power dressing” work clothing, and other aspects of everyday organisational life’ including membership of male clubs, the use of sport for client networking/entertainment, and lack of engagement with family issues because they are ‘women’s issues’ and of no relevance to male organisational players.

²⁴¹ Ibid, 5.

²⁴² Ibid, 9.

²⁴³ Ibid, 10 citing: Connell, Bob, ‘Men, Relationships and Violence’ (Keynote address to Men and Relationships Forum, Sydney, 2000), 3. Flood and Pease argue that some men at least ‘will experience women’s challenge to their entitlement as a threat to their masculinity’ (at 10). They acknowledge that it would be difficult for men (as members of a privileged group) to appraise their own position, ‘but it is not impossible’ (at 18). However, the attitudes of privilege and entitlement described by Victorian Solicitor-General Tate (above n 235) suggest that there are indeed men within the legal profession who would find it nigh impossible to adopt the ‘traitorous [to masculine dominance] identity’ required to see and understand their world through the attitudes and experiences of a subordinate group/s.

A few weeks before Tate’s speech, the Chief Justice of the Supreme Court of Victoria, Justice Marilyn Warren, said women were dropping out of the profession some five to seven years post qualification, suggesting ‘they are being used in law firms “to run the coalface of litigation”, frequently leading to burnout’; and also, that ‘a lot of women were thinking about their quality of life and about having children’ – see: Wikins, Francis, ‘Equality not just about gender: Chief Justice’ (2005) 234 Lawyers Weekly. Available <www.lawyersweekly.com.au> at June 2005.

²⁴⁴ Privilege is used here in the sense used by Flood and Pease – see: above n 236.

²⁴⁵ The significance of this support is recognised by the researchers engaged by the Queensland Law Society to survey members about work life balance. Hede and Haddon specifically refer to ‘a spouse or life partner who enables a lawyer to regularly work after hours’ – see: above n 135, 30.

²⁴⁶ Zappavigna, Andrea, Is Governor-General Adrienne Clarkson Right? The Current Status of Women in the Legal Profession (Directed Research Essay. University of British Columbia Faculty of Law, 27 March 2003) 2, 44. In her careful analysis of the Canadian situation, Zappavigna concluded that, while Governor-General Clarkon’s comments may have seemed harsh, for many contemporary women lawyers in 21st century Canada those words still reflected the reality of their lived experiences of their profession.
In concluding this Chapter, I highlight the mood for change elsewhere and foreshadow the thrust of Chapter 4 by stressing the need to acknowledge and address long standing cultural attitudes and practices if we are to move to a wide ranging conversation about an equitable future for women and men in Queensland.

3.10 CONCLUSION
This Chapter demonstrates the representative nature of my research sample. Women solicitors in Queensland are more likely to be younger, work in larger firms, work in metropolitan areas, to hold more junior positions, and to have fewer years within the profession than their male counterparts. Women are also more likely than men to view their legal workplaces in negative terms. Women within the profession are less likely to have children than are their male counterparts.

Increasing numbers of women enter the profession. But women continue to comprise less than half of solicitor numbers, disproportionately low numbers of principals or partners, and are more likely to leave their chosen profession. Women are also poorly represented in the governance of their profession.247 My research shows that women and men have broadly similar reasons to become lawyers, but little is known about what motivates solicitors generally to enter, or particularly to leave, private practice. Importantly for this thesis, no Queensland research has tracked the careers of women who exit the profession or examined their reasons for leaving.

To a significant extent a ‘club and old school tie’ culture persists within sections at least of the Queensland profession. Some practitioners report that an invisible rule book continues to disadvantage women in the profession. A 2003 Queensland Law Society EOL Committee survey revealed practitioners continue to be subject to bias and discrimination, but very few lodge complaints. Women were disproportionately affected by discriminatory behaviours. Even where individual practitioners and firms eschew discriminatory and exclusionary practices, solicitors continue to report that key indicators for promotion and advancement continue to be embedded in the outcomes of those outdated behaviours.

247 For details of involvement of women in Queensland Law Society management and committees, see: Appendix 7.
Flexibility and new ways of working are very much at the forefront of debate within the broader Australian legal profession, as well as overseas. Extensive research elsewhere shows professional bodies have been proactive (either directly, or in partnership with groups of professional women or outside consultants) in acknowledging there are problems, and in obtaining detailed data about: discriminatory attitudes and behaviours; existing work practices; ideas for new and flexible ways of working; and options for advancement and professional achievement. The need for skilled people management remains a backdrop to national and international research.

Although extensive research exists in other jurisdictions, there is still considerable work to be done to establish discrimination free private practice environments and opportunities for those seeking to follow legal careers. To date, Queensland has done far less than other States. Solicitors are indicating they want their peak professional body to be involved, and initial moves have been made in terms of work life balance. More significantly, the State regulator, the Legal Services Commission, has demonstrated a strong commitment to carry out research in a range of areas affecting women and men in daily practice. The Queensland profession needs to pursue independent research, but it can also benefit from a closer examination of work done elsewhere and an understanding of the ways that research can provide important theoretical and practical lenses to explicate issues relevant to 21st century legal practice.

In the next Chapter I will focus specifically on the first of the three key areas in my Queensland research – the issue of professional workplace discrimination. The fact that discriminatory, harassing, bullying or exclusionary practices are still occurring in solicitors’ legal workplaces damages both individual practitioners and the profession generally. Victims of such practices are not viewed as serious professional contenders with meaningful contributions to offer in any debate about the future shape and direction of the practice of law. I argue that it is essential to identify and respond to a culture that allows these practices to continue. It is only when underlying problems are addressed that the profession can engage in an open and meaningful dialogue about the future of flexibility and career pathways.
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‘Equality between men and women is a principle that lies at the heart of a fair and productive society. It is also the key goal of the Sex Discrimination Act 1984, which aims to eliminate discrimination and sexual harassment and promote greater equality in all aspects of the Australian community.’

> Human Rights and Equal Opportunity Comm.¹

And it goes back to the discrimination issue. They [the male solicitors] didn’t “discriminate” against me. They just didn’t understand how to deal with a woman who wasn’t their mother, or their sister, or their daughter.

> woman - 40s - consultant - metropolitan²

4.1 INTRODUCTION

This Chapter examines issues of legal workplace discrimination and harassment. An examination of these exclusionary practices also provides a foundation upon which the subsequent Chapters of the thesis are based. It is my contention that a professional or management culture which allows exclusionary workplace practices to continue is not a culture which will be open to new ideas and dialogue around the need for flexible work practices (the subject of Chapter 5). And it is this flexibility which in turn is seen as the key for many solicitors in achieving success (Chapter 6) in their chosen profession.

This Chapter sets out specific research findings from survey and interview phases of my research examining: behaviours and practices complained of by practitioners; how solicitors respond to and manage improper behaviours within their individual workplaces and within the broader profession; the existence or otherwise of anti-discrimination workplace policies; whether such workplace policies are seen as accessible by practitioners; and the damage that both individuals and the profession suffer as a consequence of these unnecessary, even illegal, behaviours.


² I(f)48: 20 (interview conducted 2005).
My research demonstrates that, within the solicitors’ branch of the Queensland legal profession, many women, and some men, continue to experience discrimination, sexual harassment, instances of bullying, and what I identify as a form of workplace ‘mobbing’. Even where solicitors do not experience these behaviours directly, they may witness them and be required to work in an unwelcoming, hostile, or sexually permeated, work environment in circumstances that can be difficult and confronting.

These research findings are explored within a number of theoretical frameworks. The first of these is the notion of women as ‘other’ than the existing professional norm – a concept resisted by a profession that prides itself on impartiality. This sense of otherness underscores difficulties in women’s ability to publicly raise any complaints or concerns.

Women who do not ‘fit’ existing professional norms were described during my research in terms that resonate with a strong theoretical history of ‘role traps’ within management discourses and, in particular, the seminal work of Rosabeth Moss Kanter. I argue that discriminatory and exclusionary practices within the Queensland legal profession continue to force women into role traps so men are ‘comfortable’ with women’s presence, and women can find a ‘place’ within a traditionally male domain. This Kanterian legacy is strongly evident within contemporary legal workplaces, and the thesis tracks the discourses around role traps since Kanter’s illumination of them in 1977, highlighting their ongoing use.

In this context of women solicitors being assigned specific roles, this Chapter asks whether women must ‘choose’ either family or a career. This foreshadows the discussion in Chapter 5 about the need for many women to make great sacrifices to manage their career journeys. The stark choices that can confront women highlight the sense of dissonance and disconnection research participants described when speaking about ways solicitors articulate their daily legal lives. This, in turn, throws the spotlight on the significance of sport within today’s legal culture. My research findings consider the ways sport can also act as a powerful exclusionary factor.

Importantly, the Chapter looks to significant, and relatively recent, research on a phenomenon termed ‘workplace mobbing’. The Chapter highlights the similarities between my research findings and the typical workplace mobbing factors (or ‘millstones’) described in the literature.

The Chapter then distils the mobbing style workplace behaviours, the Kanterian role traps, the instances of discrimination and harassment, the limited career paths and lack of resources reported by research participants, and an overall professional resistance to change – bringing these together in a model of ‘Exclusionary Indicators’. The model demonstrates that when multiple indicators are present in a workplace then the person ‘targeted’ is subject to what I have described as ‘exclusionary overload’. The result for such an individual (or ‘blacksheep’ as some writers have termed them) is unequal treatment, unequal opportunity, and limited career prospects.

At the outset, I turn to the concept of ‘otherness’ that forms a strong theoretical thread throughout this thesis. The stories and experiences that my research participants related are central to the issue of women’s professional inclusion in the fullest sense. In order to understand some of the underpinnings of discriminatory attitudes and behaviours that persist within the 21st century legal profession, I now look more closely at this concept of woman as ‘other’.

4.2 WOMEN AS ‘OTHER’
A United Kingdom study of women solicitors highlighted the ongoing public-private dichotomy at the bedrock of the traditional legal profession. It pointed out that the modern day profession had inherited ‘the historical legacy of a closed masculine culture’ – a culture shaped by discourses of ‘reason’ and ‘impartiality’. These discourses have historically been the natural way of viewing the profession. They are

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4 ‘Workplace mobbing is like bullying, in that the object is to rob the target of dignity and self-respect’. However, mobbing is ‘a collective movement’ where a group (e.g. managers and/or co-workers) seek ‘to exclude, punish, and humiliate a targeted worker’ – see: Westhues, Kenneth, ‘Summary for Workplace Mobbing Conference’ (Brisbane, 2004) <http://www.arts.uwaterloo.ca/SOC/kenneth_westhues.html>. Also see: an introduction to the Queensland advocacy and support group, Black Sheep, at <www.workplacemobbing.com>.

associated with the ideal of the rational male – independent, assertive, confident, and logical. The rational male is drawn in sharp contradistinction to the emotional female – dependent, submissive, and tentative. This aligns with Kanter’s findings that the most pervasive stereotype of women in organisations is that they are ‘too emotional’ whereas ‘men hold the monopoly on rational thought’. She detailed how a masculine ethic ‘elevates the traits assumed to belong to some men to necessities for effective management’ so that: a tough minded approach to problems; analytic abilities to abstract and plan; capacity to set aside personal and emotional considerations in the interests of task accomplishment; and cognitive superiority in problem solving and decision making were the benchmarks. And ‘when women tried to enter management jobs, the ‘masculine ethic’ was invoked as an exclusionary principle’. Thus the female is effectively designated as ‘other’, the outsider who has been ‘let in’; and, provided she plays by the existing (male) rules, an outsider who may be allowed to remain within a legal profession that has been described as ‘an “imagined community” which reproduces itself in opposition to the other’.

Many practitioners taking part in my research acknowledged the ingrained differences in the way women and men in legal practice are perceived. They spoke of their

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One contemporary depiction of male-female stereotypes is in a Judy Horacek cartoon which shows two children dancing – the little boy’s t-shirt reads ‘strong brave clever’ and the little girl’s ‘pretty pretty pretty’ <www.horacek.com.au> at 2007; Natasha Josefowitz’s well known poem ‘The Office’ is a pithy summation of the ways these stereotypes can play out in the workplace – Josefowitz, Natasha, The Office (poem) reprinted in Powell, Gary N (ed), Women & Men in Management (2nd ed, 1993) 101-102.

7 Kanter, above n 3, 25.

8 Ibid, 22, 22, 23.

9 Sommerlad acknowledges the concept is Benedict Anderson’s and is used in Rosemary Hunter’s discussion of the culture of the Victorian Bar’ – see: Sommerlad, Hilary, “Becoming” a Lawyer: Gender and the Processes of Professional Identity Formation” in Sheehy, Elizabeth and McIntyre, Sheila (eds), Calling for Change – Women, Law and the Legal Profession (2006) 159, 171; 177.

10 The problem for women in a broader Australian context is illustrated by the 2007 controversy about a senior member of the House of Representatives (the lower house of the Australian Parliament). Then Deputy Opposition Leader Julia Gillard, who had no children, was publicly told (by a then Government Senator) that her decision to remain ‘barren’ disqualified her from leadership. She was also criticised for the state of her kitchen, which, in one newspaper photograph, displayed an empty fruit bowl. Ms Gillard remarked that for women ‘it sometimes seems impossible to win’, but ‘[t]he novelty will wear off and there will come a time when women will be judged purely on achievements and strength of character …’. Reported in: Karvelas, Patricia, ‘Women can’t win, says Gillard’, The Australian (Sydney), 3 August 2007, 6.
belief that women’s presence within the legal profession would one day be accepted, because there will be a new guard coming in for whom having female lawyers [is] much more normal. Others spoke of the need for increased numbers of women in the profession, especially in high profile positions, to help normalise their presence and decrease their novelty or token status. People making those decisions [as to who is offered partnership] are still men. Now we’ve got women Magistrates, women Judges, women in higher positions in general across the profession makes it easier.

However, some practitioners expressed concern that the presence of high profile women, particularly by appointment to judicial office, was making it more difficult for women practitioners to claim a place within their profession. Some said they bore the brunt of complaints and often-virulent criticism from male colleagues about perceived special treatment for women. One woman captured this disquiet when she said –

_He [male judge] can hand down equally as bad judgements [as the female judge]. But the attitude is, “she’s there because they had to put her there” with all this affirmative action. And “they had to get so many tits on the bench” or something. I’ve heard it a million times._

[woman – 40s – solicitor part-time – regional]

Even where women are let in and acknowledged and accepted in the professional world, it may only be for a specific occasion or in a specific context, requiring them to reassert their credentials in every new situation. One woman described how recognition and acknowledgement from a presiding judicial officer suddenly rendered her ‘visible’ to her male colleagues. On arrival at Court she said she was completely ignored by her male colleagues doing the cocky arrogant thing. But then the Magistrate addressed her by name, and –

_All of a sudden all the men straightened up. They’re looking at me and nodding their heads going, “Yes, she is one of us”. It was this complete change in attitude …_

[woman – early 30s – left private practice]

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11 I(f)73: 13 [woman – 30s – declined partnership offer – now government sector].
12 I(f)80: 4 [woman – 30s – former associate – now government sector].
14 I(f)54: 7-9 (emphases hers).
Other women and men echoed descriptions of a clubbable and exclusive group of males whose behaviour can effectively exclude women. While some women related stories of being completely ignored by male lawyers, others recounted anecdotes of hostile language and behaviour designed to exclude them from the group.\(^{15}\)

One senior practitioner reflected on an inability to ‘fit’ the established profession when she completed her studies: *if you couldn’t play football or join the cricket team, nobody was interested. So I thought, “stuff this” and I headed north.*\(^{16}\) Years later, as a principal in a large and busy regional practice, she accepted her femaleness could result in different or ‘other’ treatment. When discussing survey findings that women were more likely to report less respectful and co-operative workplace treatment in some circumstances than were their male colleagues, this solicitor was pragmatic –

> *If* we know there’s perhaps going to be less respect paid to me because I’m a woman, well, I’ll just slot one of the blokes in and they’ll go.

\[^{17}\]

Another female principal had also been aware of her otherness. She believed she would never advance beyond senior associate in her former capital city firm because she *didn’t have the right background*, and also because the partners told her she was not cut out to be a solicitor because she was *too soft*. Being a woman was also significant when she launched her own (now established and expanding) business –

> I actually called [my practice] “[Mary Smith] Solicitor” so nobody would get surprised when they walked in and there was a woman behind the desk.

\[^{18}\]

While women indicated through my Queensland survey that clients’ responses to them were generally positive,\(^{19}\) a label of difference can arise without warning. One incident demonstrates the systemic and covert prejudice that continues to attach to the day-to-day professional lives of women; or, indeed, men who do not ‘fit’ the traditional mould. One woman, a commercial lawyer, recalled a situation where she

\(^{15}\) For example: I(m)36: 10 [man –40s – partner - metropolitan].
\(^{16}\) I(f)52: 3 [woman – 50s – principal – regional].
\(^{17}\) I(f)52: 4-5.
\(^{18}\) I(f)39: 1, 5, 2, 5-6.
\(^{19}\) Survey Question 10 How do you feel you are treated in your workplace? See: this Chapter, Section 4.7 Inside Legal Workplaces, p 4-37, esp Table 4.7.4: Q10(4) – Perceived workplace treatment by clients, p 4-47.
and a male colleague had visited banking clients. Her colleague was well known for his high profile advocacy role outside the office. She recalled they overheard a client comment as they were leaving, “who do you want to deal with, the poofter or the chick?”

I argue that many female lawyers continue to be trapped, or ‘encapsulated’, within stereotypical and outmoded roles and organisational attitudes that both overtly and subtly define woman as ‘other’ or deviant from a male norm. To a substantial extent, the lived experiences of women in the solicitors’ branch of the Queensland legal profession continue to replicate and re-present this long theoretical history that underpins both the profession of law and other professional and business fields.

Moreover, as Carrie Menkel-Meadow has pointed out –

There are many ways to exclude, such as refusing admission to the club, admitting but not listening to the new members, admitting but segregating or marginalizing, and finally, transmuting or translating the words of those excluded into the terms and definitions of the included.

I argue that this separation, or distancing, of women from the main game, and an unthinking categorisation of them as ‘other’, strengthens the need to maintain a gender narrative in research. An example of the gendered order, innocently promoted as beneficial to the firm’s employees, was an emphasis on workplace sponsored sporting or social activities that all staff could enjoy and that promoted workplace cohesion and networking –

It’s part of the exercise thing, but it’s also ... networking and a chance to ... get with your peers and talk about issues in a friendly fashion. And we do a couple of charity walks a month, fun runs and things .... And the other aspect of it is some of the younger lawyers like to get involved with partners in other sections so that their name is known ... and they may get work referrals in their area of expertise over other lawyers in their section.

[man – 50s – senior position in national firm]

20 I(f)44: 15-16 [woman – 30s – senior associate – city]. This incident occurred in an interstate office, and the client organisation responded positively to a complaint, and apologised to the two solicitors.
21 See generally: Kanter, above n 3.
23 Chapter 1, Section 1.3 Maintaining a Gender Narrative, p 1-6ff.
24 I(m)78: 12-13.
On the face it, this is a positive, and well-intentioned, program open to all. It ignores the difficulty for women who grab precious lunchtime to shop for family or for food for the evening meal.  

It ignores the women who feel despair at their double shift yet feel obliged to make it to the fun run or other social activity for fear of losing that critical informal chance to get involved with partners in other sections. It also ignores the women, and men, who seek to prioritise family outside ‘standard’ work hours and so accept a workplace invitation to include family in the social or sporting activities. In these circumstances, women in particular report feeling daunted about prospects of getting work referrals in their area of expertise when they are supervising children, and when they are likely to be seen by other section partners, if noticed at all, merely as ‘one of the wives’ enjoying a day out.

This real or perceived sense of difference, of being outside the group, was mentioned repeatedly throughout my research. However, many women were also quick to point out that they would not raise issues, or make any formal complaint, for fear of losing their careers. For them the only option appeared to be to keep their heads down.

4.3 KEEPING THEIR HEADS DOWN

Both women and men involved in my research expressed concerns that women were denied an automatic level of inclusion. Participants reported that women continued to be treated with less respect and acceptance than their male colleagues. However, there was a strong view that it was unlikely female solicitors would raise complaints or concerns in any public forum. One woman’s comments typified this in a striking way. She referred to a situation in the Brisbane office of a national firm where –

*There was an incident and the women took issue, and one of the partner’s response to that was, “Sack the bitches. Just sack the whinging bitches”… As a woman in private practice, you spend most of the time just trying to keep your head down and not make gender an issue. In my experience, most women*

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25 This bind for women was graphically illustrated in a Toshiko Nishida cartoon showing one woman and some men (all in business attire) seated around a meeting table. The wall clock shows the time at nearly 6 pm. Thought bubbles hover over each person at the end of a long day. The men have mental pictures of a cold beer, a hot dinner, a glass of wine. The lone woman has the image of a loaded supermarket trolley. Illustrating Fletcher, Clare, ‘Women of Substance’ (2007) 46 The Walkley, 17.

26 Also: If(f)80: 26-27 [woman – 30s – former associate – now government – regional].
realise it’s not really worth their career to go public with these things.
[women – 30s – former senior associate – now government sector]

One Queensland solicitor who did go public with her complaints and concerns, essentially around issues of flexible work practices, was Marea Hickie. In 1996 Ms Hickie lodged formal discrimination complaints under the Federal *Sex Discrimination Act 1984* with the Human Rights and Equal Opportunity Commission against her then legal firm. In her absence on maternity leave, Ms Hickie alleged she was stripped of her practice. She contended that the basis for this was not because of poor work performance, but because of her intention to return to work part-time. She subsequently left the firm.

At the initial hearing the Commission found that Ms Hickie had been indirectly discriminated against in the area of partnership and she was awarded $95,000 in damages. In relation to any practice requirement for her to work full time, the Commission said:

The requirement to work full time is ... a requirement with which a substantially higher proportion of men comply or are able to comply ... It is a requirement with which the complainant could not comply, due to her family responsibilities.

... the requirement was not reasonable having regard to the circumstances of the case. Hunt & Hunt have accepted that women should be able to work part time after maternity leave. In that case, they should have approached Ms Hickie’s problem by seeking alternative solutions which would have enabled her to maintain as much of her practice as possible. The firm should have considered seriously other alternatives. Ms Hickie would return to work in a few weeks and she was willing to work on urgent matters. Part of her practice could have been preserved for her with other arrangements.

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27 I(f)73: 18-19  
28 On the grounds of sex, marital status, pregnancy, potential pregnancy, and family responsibilities. (For detail of ‘indirect’ and ‘direct’ discrimination see: below n 43, n 44.) *Hickie v Hunt & Hunt* (1998) EOC ¶92-910; [1998] HREOC 8. Analysed in Jenkins, Kate and Lawrie, Craig, (eds), *Women in the workplace: sexual harassment and discrimination* (2000), 115. On 1 July 1995, Ms Hickie was made a contract partner for one year. Her Brisbane firm, Hunt & Hunt, knew that she was pregnant at that time. She went on maternity leave in September and returned part time in January 1996. Following her return from maternity leave, she found her substantive practice was transferred to others in the firm. In March 1996 a performance appraisal recommendation was to the effect her contract should not be renewed. This was in a context of earlier performance appraisals that rated her as exceptional, and a partnership nomination that described her as a good lawyer, a proven fee earner and a proven hard worker. In the course of my research, I was apprised of another Queensland solicitor in these circumstances who had legally challenged a firm who had treated her in a similar way. My research participant stressed that it had been courageous on the woman’s part: *a big thing to do and: fortunately for her she’s had other work – I(f)32: 9-10 [woman – metropolitan: recounting circumstances of other female lawyer marginalised on return from maternity leave].

29 Hunt & Hunt appealed. The appeal was the subject of a confidential settlement.

30 Jenkins and Lawrie, above n 28, 115, 126-127.
What occurred in Hickie’s case was, from a human resources perspective, very much a management issue. Her legal practice did have maternity leave and part time work policies, but these were, at best, ill thought out, as the Commission outlined:

While the absence of proper maternity leave policies is not claimed as a ground of discrimination, Ms Hickie submits that the lack of [such] policies ... indicates a lack of due attention and regard by the partnership to these important issues of personnel management and staff relations. The policies that exist are only informal. Although there is a scope for flexibility, so far from being a benefit, this … leaves each person open to favouritism and decisions based on non-objective criteria.31

Several women I spoke to during the research mentioned this decision and suggested that Ms Hickie had achieved some form of ‘justice’, but had lost a career. The case was a cautionary tale that reinforced the need for women to keep their heads down. As the following interview excerpt shows, this woman clearly recalled the case, and she went on to describe another more recent scenario in another firm –

*I remember the [Hickie] case very well. There’s no doubt that, particularly in the firm I worked at, they didn’t see part-time work and being a solicitor as something that would work. There was a [solicitor who] went from being the golden-haired child who had worked there for quite some years to being demonised. They frog-marched her out the door. They couldn’t even speak her name. She had two periods of maternity leave. So, basically, before she had the first child she was a well-respected long-standing employee; and by the time she had two young children, she was the devil incarnate.*

[woman – 30s – former senior associate – now government]32

She also said women were reluctant to take on the powerful men who ran the firms – it’s a concern in terms of getting another job and your own reputation. In 2004, the President of Australian Women Lawyers said she knew of women partners who had left four national law firms ‘because they received so little support from their law partners when they returned from maternity leave’.33 One senior male practitioner saw signs of change, because although there certainly was [gender bias in the profession], I’m seeing less of it. But, there [are] troglodytes everywhere who are an older generation who have views.34 This practitioner suggested that even one instance of inappropriate behaviour by a woman might reinforce higher expectations of all

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31 Ibid.
32 If(f)73: 8-9 (emphases hers).
34 I(m)78: 18 [male – 50s – senior partner – national firm] (emphasis his).
women, expectations that were not imposed upon men.\textsuperscript{35}

This focus of the legal professional spotlight on women and the attendant debate, however reasonable, or however irrational and misinformed, prevents female practitioners from keeping their heads down and avoiding unwanted attention. This attention serves to remind them they may have limited entitlement to claim the profession as their own. When women, individually or collectively, seek to debate issues around childcare and family responsibilities, and the associated need for flexible work practices, those issues only serve to underline their ‘otherness’. I argue this also inhibits male practitioners from expressing their interest in a more flexible and accommodating lifestyle.

This need for recognition of outside and family responsibilities was expressed strongly by women and men in my research.\textsuperscript{36} The following interview excerpt exemplifies the concerns many interviewees, women and men, expressed about the enormous stresses and pressures that men were also facing in a search for a more accommodating legal world –

\begin{quote}
because they are still expected to maintain a successful, high flying career progression. But they’re also expected to participate to a much greater extent in the rearing of their children.
[woman – 30s – senior associate – metropolitan]\textsuperscript{37}
\end{quote}

One practitioner recounted how a young male solicitor had received various offers to change firms, but had consistently refused because he wanted the flexibility to attend his young son’s cricket games.\textsuperscript{38} In this case, the practitioner describing her male colleague pointed out that he had chosen work life balance over traditional success. She also believed women’s family commitments automatically marked them as not serious about their profession, so they were not given similar choices about ways of working: and I think it would be nice to have the choice.\textsuperscript{39} A number of men

\textsuperscript{35} Ibid. He described an incident involving a female Magistrate who had taken her baby into Court.
\textsuperscript{36} Citing a New South Wales Law Society Journal article and a Canadian study by Joan Brockman, Rosemary Hunter and Helen McKelvie suggested there is ‘some evidence … that male as well as female lawyers feel aggrieved by law firms’ failures to recognise outside lives and family commitments’ – see: Hunter, Rosemary and McKelvie, Helen, ‘Balancing Work and Family Responsibilities at the Bar’ (1999) 12 Australian Journal of Labour Law 2, 3.
\textsuperscript{37} I(f)44: 7-9
\textsuperscript{38} I(f)34: 22 [woman – regional: describing male colleague].
\textsuperscript{39} I(f)34: 22 [ibid].
expressed a keen awareness that their presence was acceptable and ‘normal’ and that biases still existed against their female colleagues within the profession. As this man explained –

*I think it’s a bit of the old boys’ club. “That’s the way we’ve always done it. You fit in, and if you don’t fit in, then we’ll find someone else”.*

[man – 30s – employed solicitor – metropolitan] 40

One young woman summed up the essential impossibility of combining child bearing and child rearing with partnership in her large capital city firm because: *There was a certain attitude that it can’t be done … there’s no way you can be a partner and take six months maternity leave. Don’t be ridiculous*”. She also reported the entrenched attitudes encountered by a long-standing administrative employee who sought to work part-time after the birth of a child. The staff member explained to the senior (male) lawyer dealing with her request that she needed to continue to work, albeit part-time, and was told: it’s not my fault if your husband can’t support his wife and child. 41

The difference of women is underlined, not merely by their obligations in the private sphere and the overarching male traditions of the profession, but also by the predominantly male business world that constitutes the clientele of many legal firms. One senior partner acknowledged the need to *find some solutions to providing more opportunities for part-time work [and] career advancement [for women].* But, he recognised the imperative for: *training our clients to accept that too.* He suggested if there were *more female part-time executives they’d be more [accepting] of female part-time lawyers.* He identified female lawyers involved in the *top end commercial deals* as women who’ve made a supreme sacrifice, which [they] shouldn’t have to make. [They] shouldn’t have to be [women who’ve given up all personal life], who don’t have relationships, who don’t have children, who don’t have outside interests. 42

The picture of the ideal lawyer envisions someone: independent of outside commitments or constraints; able to devote long and uninterrupted hours to the client’s cause; moving smoothly through multiple (male) business and community networks; and able to respond unhesitatingly to demands for additional time, travel

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40 I(m)30: 22
41 I(f)73: 7, 8 [woman – 30s – refused a partnership offer – now government].
42 I(m)78: 18-19 [man – 50s – senior partner – national firm].

4-12
and effort, thus embedding traditional masculine characteristics into the underlying assumptions that drive many contemporary legal organisations. Homosocial reproduction, in the legal or corporate world, is perpetuated by an ‘unthinking and uncritical “boxing” of [desired] characteristics ... with a certain “picture” that appears to embody those characteristics’. 

These characteristics in turn impose, often unchallenged, employment conditions of open-ended availability. It is these conditions that many women are potentially unable to comply with by virtue of their family or caring responsibilities. However, many law firm employers make assumptions that women, regardless of whether they have such responsibilities and merely by virtue of the fact they are women, have less commitment, energy and ambition than their male colleagues. Research demonstrates that women’s contributions are ‘devalued’ both at the outset of their engagement as well as in the actual performance of work. One interviewee related an anecdote about a lawyer-family member who needed to engage an articled clerk/trainee solicitor, and who told my research participant –

“We needed a new articled clerk. We got a lot of applications. Of course, half of them went in the bin. They were women”.

[man – metropolitan: describing prejudice against female job applicants]

The recruitment process is very much about selecting types of people to join the firm,

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45 Both Queensland State and Australian Federal anti-discrimination legislation prohibit ‘indirect’ discrimination whereby it is unlawful to discriminate through the imposition of unreasonable conditions where particular persons (for example of one sex, or with family caring responsibilities) will be disadvantaged through their inability to comply with those conditions. In Queensland see: Sections 7, 8, 11 Anti-Discrimination Act 1991; Federally see: Section 5(2) Sex Discrimination Act 1984 and generally: Human Rights and Equal Opportunity Commission, Federal Discrimination Law (2008) 120 ff. Also see: discussion of Hickie’s Case, above n 26.


47 (m)30: 10.
and hence rejecting others. ‘Being seen to be a team-player facilitates the
demonstration of commitment to one’s colleagues and is constitutive of an identity
that is in part defined by being a member of the firm, by embracing the espoused aims
of the team and thus pleasing the client’. Women can find themselves under attack
before they complete an intake process. One woman candidate for employment found it was not her working credentials and commitment that attracted the interest of
a senior (male) solicitor, but rather the ‘threat’ of her femaleness and family life, as
this story of her recruitment interview at a large metropolitan firm illustrates –

I was gob-smacked by the stupidity of some of the questions that were put to
her in an interview by a very senior male practitioner. Not because I didn’t
think he was capable of it, but because I just thought that lawyers were
smarter than to ask really dumb questions of a woman in an interview, just
on a liability level or risk mitigation level. [I’m] not at all surprised he
might have thought it, but to ask it was the height of stupidity. She has a
child, she’s a single mother, and she had got to the second interview. And he
came in half way through and said, “You didn’t tell me you had a child” and
“I understand in fact that you look after it on your own”. It’s not that he
brought it up in any discreet or sensitive way. He interrupted the interview to
challenge her on a level of integrity.

[man – partner – metropolitan: describing behaviour of senior male lawyer]

The fact that women are seen as ‘other’ hinders inclusion and acceptance in their
chosen profession. Many respond by ‘keeping their heads down’. Moreover, some
women referred to the fact that rather than simply being accepted as an equal and
skilled professional, they were seen as occupying some traditional private sphere role,
whereby they continue to be characterised by their traditional roles within society
such as wives, mothers, and daughters, even maiden aunts. One female solicitor
noted that: women are expected to have everything, to be mothers, and brides, and

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48 Anderson-Gough, Fiona, Grey, Christopher and Robson, Keith, ‘In the name of the client: The
service ethic in two professional service firms’ (2000) 53 (9) Human Relations 1151, 1156. The
pressure to ‘please the client’ will be canvassed more fully in Chapter 5.

49 In terms of both the Anti-Discrimination Act 1991 (Qld) and the Sex Discrimination Act 1984
(Cwth), this job applicant had neither need nor obligation to provide details of her private life. The fact
or attribute of her parenthood had no bearing on the inherent job requirements of a legal practitioner.
Also, many larger legal firms come under the ambit of the provisions of the Federal Equal Opportunity
for Women in the Workplace Act 1999, which specifically aims to promote equal employment
opportunity and to eliminate workplace discrimination.

50 Whether to the smooth operations of the firm or to his own sensibilities is not entirely clear.

51 I(m)36: 15-16. Also: (I(f)70: 5) [woman – 50s – senior roles private and government].

52 See: Kanter, above n 3. See also: quote opening this Chapter, above n 2.
successful professional people, and goddesses. I now turn to those roles, and their persistence in the history of women’s workplace engagement.

4.4 KANTER’S ROLE TRAPS

As research participants themselves identified a superwoman might be seen as ‘having it all’, but she must still ‘do it all’. She must excel in her chosen career, but she must also continue to exemplify the traditional roles as well as exercise the attendant traditional functions.

Women in the legal profession are not unique in terms of any inability to access positions of power or take leadership roles. An examination of women holding senior positions in bureaucracy and government, in the United Kingdom and Australia, pointed to ‘a sexual division of labour within which power is associated with the masculine ... [with women] given access primarily only to the “soft” sectors – health, social security and international aid’. Kanter observed that women were often measured by two separate yardsticks: how as women they carried out their designated work roles, and how as workers they lived up to the image of womanhood. Where women are assigned to conventional roles, they are expected to engage in the familiar domestic and emotional labour that characterises ‘women’s work’. Male solidarity is often achieved directly at the expense of women ... [with] the interplay of sexuality and gender differences in the workplace ... indicat[ing] male attempts to control and restrict women.

Kanter described four roles: the madonna, the seductress, the pet, and the iron maiden. These Kanterian roles remain powerful in the context of this thesis. They not only continue to resonate consistently and strongly within many of today’s

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53 [f]44: 8 [woman – 30s – senior associate – metropolitan].
54 Thomson, Michael, ‘Femocrats and Babes: Women and Power’ (2001) 16 (35) Australian Feminist Studies, 193, 200. The comparison for lawyers lies in areas such as: family law, wills and probate, alternative dispute resolution, conveyancing.
55 Kanter, above n 3, 214 ff.
57 Ibid, 52.
58 Kanter, above n 3; also: Neal, Geraldine, “‘Madonnas”, “seductresses”, “pets”, and “iron maidens”: are lawyers managing badly?” (2007) 7 (Other Contact Zones - New Talents 21C) Journal of Australian Studies 57.
professional and corporate workplaces, but other researchers and some of my research participants (many unaware of Kanter's seminal work) identify workplace roles or create typologies of roles that continue to ‘fit’ with those described by Kanter some three decades earlier. I turn now to a brief exposition of each role.

4.4.1 THE MADONNA

The madonna or mother role described by Kanter is that of nurturer and carer, or counsellor. In my research, I found that not only is this role imposed on women, but women themselves may assume this mantle in the workplace setting.

The design of my research survey questions was essentially gender neutral, but in one question participants were asked to indicate whether they thought women, men, or neither, were better at a range of workplace related behaviours and activities. I highlight five of these items as relevant here in that they can be described as complementary to the caring or nurturing function. There were significant statistical differences between women and men in their responses to all five of these functions.59

The following Table 4.1 sets out these five items. The Table shows how many women and men, by number and percentage, considered men were better at something, how many though women were better, and how many saw ‘no difference’. (Hence, 36.36 percent of women saw women as better at taking an ethical stand, 63.4 percent of women saw ‘no difference’, while zero percent identified men as being better in this regard, and so on through the Table.)

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59 Mann Whitney statistical tests for significance for these items are set out in below n 61, n 62, n 63, n 64, and n 65. There was also a statistically significant difference in relation to a sixth item – promoting the legal profession MW-U=4588.00 Z=-2.01 p=0.045. Women were more likely (F: N=23, 20.91%; M: N=9, 9.57%) than men to see men as better in this role, although high numbers of both men and women saw no difference between the sexes. This issue is revisited in Chapter 5 in aspects of workplace demands and flexibility. Other responses are set out in Appendix 8.
Table 4.1: Q20 – Who is better at workplace functions?

<table>
<thead>
<tr>
<th>Q20 Who is better at workplace functions?</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td><strong>Taking ethical approach to situations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Women</td>
<td>40</td>
<td>36.36</td>
</tr>
<tr>
<td>No difference</td>
<td>70</td>
<td>63.64</td>
</tr>
<tr>
<td>Total</td>
<td>110</td>
<td>100.00</td>
</tr>
<tr>
<td><strong>Being more in touch with feelings (of colleagues, staff, clients)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Women</td>
<td>85</td>
<td>85.52</td>
</tr>
<tr>
<td>No difference</td>
<td>18</td>
<td>17.48</td>
</tr>
<tr>
<td>Total</td>
<td>103</td>
<td>100.00</td>
</tr>
<tr>
<td><strong>Having strong sense of social justice</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Women</td>
<td>41</td>
<td>43.62</td>
</tr>
<tr>
<td>No difference</td>
<td>53</td>
<td>56.38</td>
</tr>
<tr>
<td>Total</td>
<td>94</td>
<td>100.00</td>
</tr>
<tr>
<td><strong>Communicating (with colleagues, staff, clients)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>2</td>
<td>2.00</td>
</tr>
<tr>
<td>Women</td>
<td>57</td>
<td>57.00</td>
</tr>
<tr>
<td>No difference</td>
<td>41</td>
<td>41.00</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100.00</td>
</tr>
<tr>
<td><strong>Contributing to staff/office morale</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Women</td>
<td>47</td>
<td>42.73</td>
</tr>
<tr>
<td>No difference</td>
<td>63</td>
<td>57.27</td>
</tr>
<tr>
<td>Total</td>
<td>110</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Women were inclined to appropriate for themselves these hallmarks of the carer or nurturer, with men agreeing in some cases that women were better. However, men were more likely to indicate they believed there was no difference – a result which, I suggest, relates to men seeking to appear gender neutral.\(^{60}\) I argue these five items: taking an ethical approach,\(^{61}\) being more in touch with feelings,\(^{62}\) having strong sense

\(^{60}\) A similar phenomenon was observed by Sommerlad and Sanderson in their UK study, where they suggest that ‘perhaps employers’ claimed impartiality should be viewed as symptomatic of lawyers’ self image as intrinsically fair’: above n 5, 158. Schultz suggested that women may ‘identify with the stereotype to an exaggerated degree in order to overcome a sense of insecurity’: above n 6, 307. Women have also learned to embrace acceptable roles as a means of negotiating a male world: Neal, Geraldine, ‘The fifty foot high woman – legal women discovering their place’ (Paper presented at ‘Discovery’ Conference, Central Queensland University Women in Research, Rockhampton, November 2003).

\(^{61}\) MW-U=4085.00  Z=-3.388  p=0.001.

\(^{62}\) MW-U=3418.50  Z=-4.057  p=0.000.
of social justice, communicating, and contributing to office morale can all be seen as integral to the caring or mothering persona. These are Cynthia Epstein’s ‘good women’, or the ‘dutiful daughters’ described by Margaret Thornton in the Australian context.

Assumptions around the mothering role as the appropriate role for women caused numerous difficulties for women I interviewed. They gave examples of how parenthood, or even potential parenthood, marked them as not committed to law. One part-time woman, with young children, appreciated the flexibility offered by her firm, but expressed concern this might present a future dead end if she was viewed solely as a mother rather than a lawyer, because she had become a sort of a poster girl for flexible working arrangements. She feared her firm would perceive that she would stay in a mothering role and work on a part-time basis. She, however, was anxious for the firm to seriously consider flexible partnerships.

The viewing of women through such a limiting lens also has adverse consequences for men. One male solicitor wanted to take parental leave after the birth of his child, but recognised this would move him outside accepted roles. He explained to a female colleague: there’s no way I could take some parental leave. These guys [male partners] would just annihilate me. [They] would never let me live it down. Some American research shows that while women who become mothers ‘trade perceived competence for perceived warmth’, men who become fathers ‘gain perceived warmth and maintain perceived competence’ so that it ‘does not diminish their professional

63 MW-U=3339.50 Z=-2.877 p=0.004.
64 MW-U=3234.50 Z=-3.448 p=0.001.
65 MW-U=3879.50 Z=-3.401 p=0.001.
66 It is beyond the scope of this thesis to examine the ‘ethic of care’, but see: Gilligan, Carol, Ward, Janie Victoria and Taylor, Jill McLean (eds), Mapping the Moral Domain – A Contribution of Women’s Thinking to Psychological Theory and Education (1988). Current Queensland research examines the fact women lawyers are less likely to attract client complaints, strongly suggesting this may reflect the ‘different’ way women practice law: Bartlett, Francesca, ‘Professional Discipline Against Female Lawyers in Queensland – A Gendered Analysis’ (2008) 17 (1) Griffith Law Review 301; Bartlett, Francesca and Aitken, Lyn, ‘Are women more caring lawyers?’ (Paper presented at Third International Legal Ethics conference, Gold Coast, 14 July 2008).
67 Epstein, above n 22, 268 ff.
69 I(f)44: 28 [woman – 30s – senior associate – metropolitan].
70 I(f)73: 8 [woman – metropolitan: recounting conversation with male colleague].
opportunities’. Further research is needed in an Australian, and Queensland context, to see whether fatherhood that involves taking parental leave, is a detriment to men’s careers.

Just as the *madonna* role can be adopted by, or more often imposed on, women, Kanter’s *seductress* role was not necessarily an active one initiated by women. It was a role to which ‘attractive’ women could be assigned within the workplace, and again various research participants identified this role.

### 4.4.2 THE SEDUCTRESS

Kanter’s *seductress* is a sexual object. A woman might be unaware she has been ‘classified’ as ‘sexually desirable and potentially available’ or that she is seen as a sex object, and perhaps, as some research participants detailed, even employed for that purpose or otherwise subjected to workplace sexual harassment. While research participants described overt sexism and sexual harassment as occurring much less than in past years, many described it as an ongoing problem that had become more covert or subtle. Or, sometimes not so subtle, as this male practitioner described –

> I still think it’s a sexist profession in the structure of it and women could feel very much as though they’re left out of things. There were certain young [male] partners who had inflated egos, and it tended to be that young attractive women were treated fairly well, and those who weren’t [young and attractive] were sort of left on the outer.

[man – 30s – employed solicitor – metropolitan]

One young woman described being *so keen to do well that I ignored a lot of that behaviour, denied to myself that it was even happening*. She went on to detail two separate workplaces where senior male partners (*taking advantage* of their powerful positions within the firms) were engaged in extra-marital affairs with female staff.

She recalled *countless examples of inappropriate behaviour at staff parties* and said *there was a fine line between a relaxed, comfortable working environment ... and going too far.* She recounted how the line was often crossed with sexually charged

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72 Kanter, above n 3, 234.
73 Wajcman, above n 56, 111.
74 [m] 30: 6.
comments and jokes as well as inappropriate behaviour. Or, as another interviewee expressed it, going beyond just somebody being a bit blue.76

One female principal who had experience of both large metropolitan and smaller regional legal practices described disturbing cases of sexual harassment when she was an articled clerk, with one incident at least amounting to sexual assault. She recalled one senior male partner had an affair with a young female solicitor which was a gross abuse of power. She described how she learned, like other women in those firms, to avoid situations or just sort of laugh and move off and try to dodge and hide behind people. She heard stories from other women, both her contemporaries and older, more established, women that made her realise [it] was not an isolated incident that happened to me. She went on to report she had heard similar stories very recently about a partner with very inappropriate behaviour. And it [sexual harassment in the profession] has not gone away at all.77

Such stories gathered during my research resonate with a 2002 examination of sexual harassment in employment complaints by the Australian Human Rights and Equal Opportunity Commission, which concluded it was ‘a significant issue for women in the workplace’ and that ‘sexual harassment by men of women is occurring throughout Australian workplaces’.78

A number of research participants detailed seriously inappropriate sexual behaviours. One woman spoke of terrible stories of young articled clerks who’ve been sexually harassed and the injustice that ensued when it’s the young articled clerk who has to leave, not the partner who’s been responsible.79 One young male employed solicitor

76 I(f)38: 11 [woman – 50s – litigator – metropolitan].
77 I(f)39: 9-12 (emphasis hers).
79 I(f)32: 9. See: Case Comment, ‘A Licence to Discard? Failed Sexual Relationships in the Workplace and Sex Discrimination’ (2007) 78 (June) Employment Law Bulletin 2 (considers the United Kingdom Employment Appeal Tribunal unreported case of B v A where a solicitor dismissed his personal assistant (with whom he had been having a sexual relationship). The Tribunal found the dismissal was unfair, but did not agree it was sex discrimination.)
spoke of incidents he had observed or heard about, dismissing some as light hearted, but describing others as negative and very dark, even having an evil aspect. He said in one firm where he had worked only two types of women were hired: either attractive young women or incredibly experienced older and very efficient women. He said it was expected that the [older] women [would look] after the work of the younger women, leaving the latter ‘available’: I know of occasions where [that] pool of women [was] propositioned by the more senior male members of the firm.

The only defence that seemed available to many women was a shared knowledge of the perpetrators, and warnings that were passed on to newcomers to a section, or to a firm, or to a town. One interviewee said she was warned about a particular partner and that there were still a couple of characters in town, one reasonably recently qualified. Some participants detailed sexual harassment perpetrated by clients, but in one instance no action was taken as the client was too necessary to the firm; and in another case lawyers knew the client should not be in close proximity to female staff, yet nothing was done because of commercial reasons.

Some women obviously left these firms and moved on with their careers, but not all had that financial or career luxury, particularly those who were in junior positions. Women leaving because of sexual harassment accords with United States research findings that ‘women are nine times as likely to quit because of sexual harassment … [and] [s]exual harassment may be especially prevalent in the traditionally male professions of … law’.

Women research participants also detailed other difficulties in their quest to be seen as ‘serious’ lawyers, especially when they were relegated to the role of ‘pet’. 

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A colleague (former Queensland solicitor with large national firm) is in the final stage of publishing a novel that includes episodes of sexual harassment in a large law firm. Many of these events are based on her actual experiences and observations of Queensland private legal practice in the last decade.

80 I(m)41: 18 [man – 30s – employed solicitor – now regional].
81 I(m)41: 19. Also: I(f)34: 31 [woman – 30s – principal – part time].
82 I(f)33: 14 [woman – 50s – partner – regional].
83 I(f)34: 11-12 [woman – 30s – principal – part time – regional].
84 Crosby, Faye J, Williams, Joan C and Biernat, Monica, ‘The Maternal Wall’ (2004) 60 (4) Journal of Social Issues 675, 676. Some research participants agreed that sexual harassment was one of the main reasons they left law: I(f)50: 14; also I(f)80: 7; I(f)51: 17-18. Other women dismissed incidents of physical sexual harassment as feeble, inept, pathetic, hardly worth mentioning.
4.4.3 THE PET

Kanter saw this role in the context of a ‘kid sister’ or helper. These women could be adopted by men and ‘looked after’, but not with a view to progressing their careers in line with their male counterparts. One woman described opportunities for her to be involved with Law Society committees or to serve on her local law association. She said male partners within her firm tried to block her aspirations, suggesting *I was “too young”*, *suggesting it was “inappropriate” for me because of my family responsibilities.* No such comments were made to her young male colleagues within the firm, some of whom also had family responsibilities, and who were encouraged to become involved in these aspects of the profession.

A Kanterian *pet* would certainly not be viewed as a serious professional contender. Similarly, Cynthia Epstein warned that a ‘sweet girl’ was unlikely to be considered for her legal competence. While the solicitor who discarded job applications from women suggested, by way of explanation to my research interviewee, *women are emotional creatures.* Other research suggests that attractive women evoke ‘stereotypes of lesser competence’ and are seen as less suitable for managerial jobs.

The young woman who reported active resistance to her efforts to broaden her professional involvement described how she was fussied over by partners when she had a child and told she would no doubt want to stay home as a full-time mother, as did their own wives. Her resistance to this imposed role was met with bewilderment, and even anger, in line with Kanter’s conclusion that those who resist imposed roles may be punished for moving outside their permitted ‘place’.

Another woman expressed discomfort at sudden interruptions to team meetings held to work on a client’s case, when her male colleagues would stop mid-sentence to

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85 Kanter, above n 3, 233.
86 I(f)80: 6 [woman – 30s – former associate – regional].
87 Epstein, above n 22, 277.
88 I(m)30: 11 [man – metropolitan: describing attitude of a male principal].
90 Kanter, above n 3, e.g. 218, 231.
apologise to her for their use of strong language. She expressed both frustration and concern because –

_They don’t do that to the men in the room. They only do it to me ... There’s no need to do that. You don’t have to single me out and treat me differently._

[woman – 30s – senior associate – metropolitan]^{91}

One young female partner in my study reported being _flabbergasted_ and _speechless_ when she found she _was treated with less respect, particularly by older male practitioners_. She recalled: _phone calls when I was called “little girl”, “dear” and the like. That sort of thing doesn’t happen [to me] any more, but ... I [gather] it still happens._^{92} And only a couple of research participants dismissed the use of such diminutives or endearments in professional communications as a non-problem.

Epstein placed the role of the _pet_ in a helpmeet capacity, perhaps a backroom researcher to a more high profile male role.^{93} A number of participants suggested ‘backroom’ or ‘helper’ roles as ways the profession could be made more open to those with family responsibilities. However, they found it difficult to contemplate or formulate part-time roles that carried real power and prestige within the profession.

The fourth role of _iron maiden_ identified by Kanter is one where women may be seen as serious lawyers, but where they can be shunned and left isolated, because they no longer ‘fit’ acceptable pictures of womanhood.

### 4.4.4 The Iron Maiden

The first three Kanterian roles are typically ones that men impose on women. This fourth role is one usually ‘chosen’ by women. Women will often make a clear

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^{91} I(f)46: 6-7 (emphasis hers). Sommerlad and Sanderson, above n 5, quoted one junior practitioner: ‘we’re still there to be patted on the head’ (159). This was in interesting juxtaposition to a senior male partner in their study, who argued that women were not disadvantaged, but that if legal women did resent their low representation in the senior ranks this was simply a sign of ‘their immaturity’ (159). The ‘pet’ role is captured in an English cartoon showing the older avuncular male solicitor greeting the young female practitioner and saying: ‘So you went to law school and now you want to study law, I think that’s sweet’ – see: Carbolic Smoke Ball Company, _Catalogue of Products for Lawyers_ (2001) 4.

^{92} I(f)40: 2 [woman – 30s – partner – regional]. Also: I(f)73: 12 [woman – 30s – former associate – now government]; I(f)70: 2 [woman – 50s – various senior roles – metropolitan]. One example of this as a non-problem: I(f)52: 18 [woman – 50s – principal – regional].

^{93} Epstein, above n 22, 104-105. One male participant, who earnestly struggled to find ways in which women could perhaps take a part-time role in the profession, described backroom research as a real possibility for women – I(m)75: 2 [man – 50s – former sole principal – metropolitan].
statement that they intend to be, and are, ‘serious lawyers’. Generally, strong competent women are viewed in contradictory ways. They may be Kanter’s iron maidens, but they may also be categorised as tough ‘bitches’,94 ‘mannish’95 and ‘creeps’96, the sort of women that invite a she’s got balls97 comment. One senior woman believed there definitely is gender bias in the profession, but was concerned at the way she saw some women tried to combat this –

_I think some women have taken the attitude that they have to become pseudo males in order to succeed. And therefore they believe the “kick head” way of doing law is the right way to do it, and that is how they’ll become partners._


One male interviewee said that in his observations the successful women, particularly when I was in [the city], believed that they had to be successful men in their behaviours.99 A small number of interviewees expressed concerns that some of the younger women entering the profession were behaving aggressively in their dealings with colleagues, apparently believing this was what was needed in order to get ahead. One senior practitioner described young female solicitors as aggressive little bitches. She regretted this change she had observed in lawyers’ behaviour, saying: _I was never like that and my friends [in the profession] were never like that._100 Some practitioners recognised the double judgement Kanter identified if women were labelled as aggressive and pushy. _All those negative things are perfectly all right for blokes to be, but once a woman starts [to behave like that] you’re a problem._101

Childless women in particular who appear focussed solely on career more closely resemble Margaret Thornton’s ‘benchmark man’.102 These women may find the career path easier to travel. But, does this mean that women must indeed make the

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95 Epstein, above n 22, 287.
96 Ibid, 280.
99 [m]41: 12 [man – 30s – employed solicitor – regional].
100 [f]49: 5 [woman – 50s – sole principal – metropolitan].
101 [f]76: 4 [woman – 30s – employed solicitor - metropolitan].
102 Thornton, above n 68, 163.
‘supreme sacrifice’ in order to enter, and achieve in, their profession – must they be iron maidens?

Kanter’s work, specifically her detailing of the role traps than encapsulate many women, remains a powerful tool in an examination of women within workplaces. In the next Section I consider this legacy, including the ways these roles have persisted and remain evident within Queensland legal workplaces.

4.5 A KANTERIAN LEGACY

Kanter argued strongly for the wider applicability of her work to organisations of different sizes and within different sectors. She specifically saw it as applicable to women in legal practice. Joan Acker mounted a powerful argument that organisations are built on ‘a gendered substructure … [that] helps to explain the persistence of male dominance and female disadvantage’; while Kanter was to claim a decade after her 1977 work that her conclusions were unchanged – with ‘productivity, motivation, and career success’ ‘having more to do with [the ways women and men were dealt with by organisations] than with inherent differences in ability or drive’. In 2000 the ‘pivotal’ nature of Kanter’s work was acknowledged in identifying ‘an unequal distribution of power and resources’ as the basis for women’s difficulties in accessing leadership roles, specifically within the legal profession. Her work continues to inform much of the research that has followed, with one commentator arguing that it was ‘impossible to consider the status and

103 See: reference to ‘supreme sacrifice’ above n 42.
106 Kanter, Rosabeth Moss, ‘Men and Women of the Corporation Revisited’ (1987) March Management Review 14. (Kanter wrote that ‘the job makes the person’ and that is why she styled her study as men and women of the corporation, stressing that her choice of preposition was ‘significant’.)
experience of women in organizations today without reference to [Kanter’s work].’

Although more than 30 years have passed since Kanter published her work on women in corporations, the individual roles she identified – *madonna, seductress, pet,* and *iron maiden* – do persist. They are observed either in line with, or independently of, her work by numerous researchers, commentators, sources of popular culture, and those actually working to find their place within professional and legal workplaces. While Kanter argued (in part) for larger numbers of women to overcome their token status in organisations, I do not accept or rely on a numbers only argument as a sole means to improve the position of women in law. I accept and argue that the overarching culture and context will ultimately determine who rides the glass escalator and who is trapped under the glass ceiling.

However, there is some evidence to support the value of increased numbers of women partners in law firms as having a positive effect on increased numbers of legal women


[109] I acknowledge critiques of Kanter’s work. Janice Yoder argued for looking beyond numbers – Yoder, Janice D, ‘Rethinking Tokenism: Looking Beyond Numbers’ (1991) 5 (2) *Gender & Society* 178. The main difficulty has been Kanter’s contention that women’s inferior position within organisations was a problem of numbers and that women’s position would improve as they ceased to be mere ‘tokens’ numerically. Yoder pointed out (181) that Kanter had failed to appreciate the role of ‘gender status’ and the ‘extent of organizational and societal sexism’, as subsequent studies have shown that women in ‘gender inappropriate organisations’ (e.g. management, academia, law, mining) experience ‘performance pressures, isolation and role encapsulation, but men do not’ (e.g. men in nursing, teaching, social work) (183).

Jennifer Pierce (Pierce, Jennifer L, *Gender Trials – Emotional Lives in Contemporary Law Firms* (1995)) criticised aspects of Kanter’s work, arguing that her (Pierce’s) own research contradicted Kanter’s thesis that members of numerically token groups in organisations will seek to lower their ‘visibility’ by adopting dominant (male) behaviours. Pierce found only ‘a small proportion’ of her research sample adopted a ‘male model’. Hull and Nelson provide a tidy refutation of Jennifer Pierce’s critique (below n 112). They also saw Pierce’s interpretation of Kanter to the effect that ‘structure drives action’ as simplistic. They point out that Kanter’s argument is ‘more dynamic’ positing that structure and behaviours interact and that if a behaviour is ‘a reasonable response’ to the organisational position or demands, then the response is not simply ‘mechanically inevitable’. Rather, ‘social structure does not control so much as it limits’ (emphases in original).

hired at lower levels.111 As Kathleen Hull and Robert Nelson point out Kanter had argued ‘heightened visibility can be uncomfortable and problematic’ but those who are within that small group of ‘tokens’ will respond in various ways (emphasis mine), usually falling within three typical patterns: overachieving to minimise concerns of others; turning public notoriety to their advantage; or seeking to become socially invisible.112

The use of Kanterian analysis in my examination of the lives of female and male solicitors in Queensland facilitates my commitment to the maintenance of a strong gender narrative in research. I have traced the usage and typology of the four key Kanterian roles, or equivalents, in the literature, and within common usage. I have summarised this recognition or development of particular role types or traps for women in Table 4.2 on the following pages. The notes included immediately below the Table detail the relevant sources.

Table 4.2: Development of Kanter’s role trap typology for professional and legal women

<table>
<thead>
<tr>
<th>Date</th>
<th>Source</th>
<th>Madonna</th>
<th>Seductress</th>
<th>Pet</th>
<th>Iron Maiden</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977i</td>
<td>Kanter</td>
<td>Maternal or caring role</td>
<td>Sexual object (may not be aware</td>
<td>Tolerated helper - perhaps in</td>
<td>Seen as tough – often isolated</td>
</tr>
<tr>
<td></td>
<td></td>
<td>appears regularly in literature</td>
<td>of or act out this role)</td>
<td>research/ backroom role</td>
<td>children</td>
</tr>
<tr>
<td></td>
<td></td>
<td>– is ‘comfortingly safe’</td>
<td>may be ‘accused of using</td>
<td>‘kid sister’ ‘mascot’ ‘cheerleader’</td>
<td>‘virgin aunt’ ‘militant’</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>sexuality to unfair advantage’</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1981ii</td>
<td>Epstein</td>
<td>‘good women’ of legal</td>
<td>‘pretty girl’ ‘a honey’</td>
<td>‘a sweet girl’ unlikely to be</td>
<td>‘over achievers’ ‘militant’</td>
</tr>
<tr>
<td></td>
<td></td>
<td>profession</td>
<td>‘sweetheart’ - legal culture ranks</td>
<td>seriously assessed for her legal</td>
<td>‘creeps’</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>‘good looker’ above good lawyer</td>
<td>competence - ‘a helpmeet’</td>
<td></td>
</tr>
<tr>
<td>1983iii</td>
<td>Menkel-Meadow</td>
<td>‘spinster career woman’</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1988v</td>
<td>Rowland</td>
<td>‘pretty girl’ ‘a honey’ ‘</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘sweetheart’ - legal culture</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>ranks ‘good looker’ above good</td>
<td></td>
<td></td>
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<tr>
<td>1992v</td>
<td>Kennedy</td>
<td>‘mothers’</td>
<td>‘whores’</td>
<td>‘wives’</td>
<td></td>
</tr>
<tr>
<td>1995vi</td>
<td>Pierce</td>
<td>‘mothering role’ ‘emotional</td>
<td>‘fun-loving sister’ ‘tomboy’ ‘</td>
<td>women who take on other roles,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>labour’ - need to ‘play mom’</td>
<td>‘wives’ (as supportive secretary</td>
<td>who break rules of permitted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Newman</td>
<td></td>
<td>or assistant)</td>
<td>sisterly behaviour, seen as ‘</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>‘difficult’ or ‘troublesome’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hearn &amp; Parkin</td>
<td>‘nurturant mother’</td>
<td>‘seductress’ ‘dumb blondes’</td>
<td>‘sophisticated manipulators’</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>‘tragic maidens’ ‘victims’</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996vii</td>
<td>Thornton</td>
<td>‘dutiful daughter’ expected to</td>
<td>‘disorderly woman’ ‘carnal</td>
<td>‘benchmark man’ (women in the</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>spend time caring</td>
<td>temptress’</td>
<td>shadow of)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘virtuous woman’</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1997vii</td>
<td>Sturm</td>
<td></td>
<td></td>
<td></td>
<td>‘gladiator’ (seen as unfeminine)</td>
</tr>
<tr>
<td>1998v</td>
<td>Sommerlad &amp; Sanderson</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘junior women ‘to be patted</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>on the head’ - resenting low</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>partnership numbers shows</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘their immaturity’</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999v</td>
<td>Wajcman</td>
<td>‘counsellor’ ‘good listener’</td>
<td>‘sex object’ – ‘sexually</td>
<td>‘adopted’ by men, encouraged to</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>can provide emotional services</td>
<td>desirable and potentially</td>
<td>admire male colleagues, valued</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>to male colleagues</td>
<td>available’</td>
<td>for ‘girlish’ traits</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>‘tough women’s libido’ (if woman</td>
</tr>
<tr>
<td>Year</td>
<td>Author(s)</td>
<td>Description</td>
<td>Role or Trait</td>
<td>Stereotype</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----------</td>
<td>-------------</td>
<td>---------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>Lively</td>
<td>‘perfect mother’ – ‘providing care’</td>
<td>‘showing deference’</td>
<td>‘maintaining professionalism’</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>English legal cartoon</td>
<td></td>
<td></td>
<td>male lawyer tells female her ambition to practise law is ‘sweet’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Heffernan</td>
<td></td>
<td></td>
<td>seen ‘strictly as ornaments, not as power players’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prokos &amp; Padavic</td>
<td></td>
<td></td>
<td>‘bitches’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sommerlad</td>
<td></td>
<td></td>
<td>‘iron in your soul’ - ‘leave heart and soul on coat peg’ - adopt body language, etc of men</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>Schultz</td>
<td>‘housewife’ (performing necessary chores)</td>
<td>‘bride’ or ‘sweetheart’</td>
<td>‘stupid’ ‘mindless’ ‘inexperienced’ (in support roles)</td>
<td>think with a ‘male head’ ‘pit bull’</td>
</tr>
<tr>
<td></td>
<td>English</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>Heffernan</td>
<td></td>
<td></td>
<td>‘ornamental geisha’ valued for attractiveness - skills disregarded</td>
<td>‘invisible woman’ stays under radar – no credit for job well done ‘bitch’ assertive - lonely (determined not to be geisha) - ‘guy’ hides femininity</td>
</tr>
<tr>
<td>2005</td>
<td>Croucher</td>
<td>‘pastoral care’ as the ‘Mother Confessor’ - ‘long periods of unreciprocated psycho-therapy’ for male colleagues</td>
<td></td>
<td>‘some dumb girl’ - women dismissed - contributions not seen to be of value</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bartow</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005 - 2006</td>
<td>Neal - research interviews</td>
<td>‘mothers’</td>
<td>‘goddesses’ ‘brides’</td>
<td>‘sisters’ ‘daughters’</td>
<td>‘worse than men’ ‘pseudo males’ - the ‘kick head way of doing law’ ‘aggressive and pushy’</td>
</tr>
<tr>
<td>2007</td>
<td>Horacek</td>
<td>‘virgin’ ‘housewife’ ‘nurse’</td>
<td>‘whore’</td>
<td>‘minor supporting role’ ‘figure of authority’ (stolen from men)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bastalich et al</td>
<td></td>
<td></td>
<td>‘outsider’ ‘foreigner’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Brisbane solicitors</td>
<td>‘matron’</td>
<td>‘glamour puss’</td>
<td>‘goody two shoes’ ‘bitch’</td>
<td></td>
</tr>
</tbody>
</table>


xvii. Typical quotes from Neal research interviews conducted 2005 and 2006.

At this juncture, I point out there are references in the literature to stereotypes and roles ascribed to men. Jeff Hearn and Wendy Parkin (citing Kanter’s work) suggest these are more likely to be in heterosexual pairings, or binary oppositions, that signal men’s dominant status and power over women – for example: macho/seductress, chivalrous knight/helpless maiden, possessive father/pet, tough warrior/nurturant mother.113

But, as Table 4.2 demonstrates, it is the stereotyped roles for women that persist. These stereotypical roles and labels for women are not something relegated to the past history of women in law or the workplace generally. Further, woman may be assigned different roles in different settings. Teresa Moore, in her study of senior university women, argued that women themselves may ‘choose’ or appropriate different roles in order to be ‘acceptable’ or to ‘manage’ particular situations.114 I argue the notion of real choice for many women within the legal profession is illusory, because their status and the associated roles within (at least some) workplaces is imposed by the masculinist culture and male gatekeepers who, as senior and managing partners, control the firm’s direction and its human resource management strategies.

Stereotyping is routinely used to ‘categorise organisational relationships and roles’115 and these ‘grossly inaccurate’ and ‘crude simplifications’ of ‘complex issues’ can have devastating long-term effects, especially for women.116 As Table 4.2 shows, lawyers themselves recognise the labels and identify the roles to which many women continue to be assigned.


115 Hearn and Parkin, above n 113, 143.

116 Hearn and Parkin, above n 113, 143-146. The authors argue the long-accepted and unchallenged usage of masculinist and sexist language further oppresses and marginalises women at work.
The Kanterian analysis in this Chapter is integral to the subsequent Chapters around workplace flexibility and success, as the three key research areas cannot be considered in isolation from each other. The sense for some women of being ‘other’ or outside the traditional male norm of the profession results in many women working to ‘keep their heads down’ and to blend in to their chosen profession. Drawing attention by seeking to debate issues around family responsibilities in general, and childcare in particular, removes women from the obscurity (albeit relative safety) of the margins.117 Where stereotypical roles are also imposed on women lawyers, this serves to reinforce women’s difference within, and exclusion from, traditional (male) professional structures.

Within the context of this Chapter’s examination of discriminatory and exclusionary practices, including the imposition of outdated roles as reported by many research participants, the next Section looks at the discriminatory aspects of the dichotomy of choice and sacrifice faced by many solicitors in private practice. For women in particular, it often seems impossible to combine and enjoy family and legal lives. The choice becomes family or ‘firmily.’118

4.6 FAMILY OR FIRMILY?
In the late 1980s an article by Felice Schwartz set off a train of responses and commentaries about the loss of female talent to firms and corporations, unless, ‘those females … are willing to be childless or to have minimal involvement in their children’s lives’.119 Schwartz subsequently protested the way in which her description of those involved in parenting as being on ‘the mommy track’ was seized on by the

117 Although the number of women solicitors is steadily increasing, women remain under-represented at the senior leadership levels of the profession.
118 I am grateful to Griffith University colleague, Megan Dixon, who alerted me to this term (used to describe the level of ‘commitment’ of lawyers at some of the large Brisbane law firms).
In October 2008, an article appeared in Queensland on the work life debate inviting solicitors to participate in a survey. The authors posed the question: ‘Which is more important to you?’ and added ‘Yes, it’s an unfair question – you shouldn’t have to choose. And yet … you do choose, every day …’ – see: Hede, Andrew and Haddon, Barbara, ‘Do you want better work-life balance?’ (2008) 28 (9) Queensland Law Society Proctor 29.
popular press. But it is a phrase that continues to resonate in the Queensland profession some two decades later. Women who opt out of the profession for a set period of time, or on a part-time basis, to focus on child rearing and family responsibilities largely continue to be sidelined and not seen as serious partnership contenders.

One committed full-time woman’s description of her situation was typical of stories recounted during the interview phase of the research. She had three children and spent some time working part-time when they were young. So they [the male partners] definitely just thought I was on the sideways track. She rejected a mutually exclusive choice between electing to have a family or putting all my energies into my career. This woman was told how much she was ‘valued’ but that a less senior (male) lawyer was ‘next in line’ for partnership. Her experience resonates with research findings that subordinate women will often receive much praise but few valued resources. She admitted her frustration as she considered some of her male colleagues who had become partners –

I know I could do a ten times better job than what they do; and the big hours that I might put in are the same; that the happy clients that go away are the same, if not more; and I look at, “Well I’m being paid this, and they’re being paid eight times that”. The inequity in that can really get to you sometimes.

Schwartz described some alternative career paths within professions such as law and accounting, praising the creation of a new ‘mezzanine level’ (such as special counsel for lawyers). However, she also acknowledged that women actually engaged in those professions did not necessarily see these options as helpful, but rather as dead ends or ‘velvet ghettos’. Later commentators, and interviewees in my research,

122 Ibid
123 Schwartz (1992), above n 119, 183.
124 Ibid
have used a range of similar terms including: *cul de sac careers*;¹²⁵ *mummy route*;¹²⁶ or *sideways track*;¹²⁷ or, a commitment to the ‘marriage career’;¹²⁸ ‘the baby bar’;¹²⁹ and the ‘maternal wall’.¹³⁰ They have accepted that children may not be a temporary delay on a career path, but rather ‘a total derailment’;¹³¹ and acknowledge that their female colleagues have probably not ‘opted out’ but have been ‘squeezed off’.¹³²

One woman said ‘alternative’ career paths reduced lawyers’ options for career progression and hence reduced opportunities for wielding power within the firm. She felt such a designation was something of a self-fulfilling prophecy, and that women were effectively being ‘sidelined’ from partnership –

*If they were brutally honest I suspect they realise [the firm is] not going to make them a partner [and] doesn’t quite know what else to do with them.*

[woman – 30s – senior associate – metropolitan]¹³³

A few women spoke in favour of these ‘alternative’ roles and said they did not feel cut off from power or decision-making in their firms, but this was a minority view.

Large law firms which are run on competitive corporate lines may boast policies and programs to assist women, and men, manage families as well as their career progression. But some solicitors in these firms suggest that policies may have style but not necessarily substance. This remark was typical of negative comments made by some women from large firms –

*That [women specific section of the] web site was implemented a couple of*

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¹²⁶ I(f)50: 2 [woman – 40s – senior associate – international firm – metropolitan].
¹²⁷ I(f)37: 2 [woman – 40s – senior position – metropolitan]; or *side-tracked* I(f)54: 18 [woman – 30s – solicitor – now community sector].
years ago. The best graduates coming out of uni are women. The firms do want to attract them. Pretence or otherwise, they’ve got to make out that they’re doing something about promoting women and offering women a career path. And to me … when none of that is being really considered in career progression, it’s just tokenism.

On a broader canvas, I recognise that it is not just women in the legal profession who are making sacrifices in order to pursue chosen career paths. Australian commentators are reporting the proportion of managerial women without children is quite striking, and beyond that of the general population. Similar reports have come from the United States, ‘suggesting that childlessness among women in management is now double that among their male counterparts;’ and similar trends have been observed in the United Kingdom.135 In her important British study of women and management, Judy Wajcman posited childlessness as ‘a precondition of a successful management career’.136 Two-thirds of the (managerial) women in Wajcman’s British study were childless. Closer to home, Leonie Still’s 1993 Australian research found that same fraction of women managers reported having no children.137 In a 1999 Canadian study, Ronald Burke concluded that for nearly 800 professional and managerial female business school graduates ‘the pattern of findings almost always showed that being married or having children had negative career consequences’, with parental status tending to have more effect than marital status.138

While it is beyond the scope of this thesis to examine the ‘competing and contradictory discourses’139 about childlessness, I acknowledge that there are strongly divergent views about whether women are exercising true agency and freely appropriating adult roles that do not include that of the traditional maternal caregiver.

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134 If(f) 37: 7-8 (emphases hers); and: F18(S) [woman – 30s – city firm]. See also: Shiel, Fergus, ‘Lack of fraternity for lawyers juggling work and family’, The Age (Melbourne), 11 November 2005, 2.
136 Wajcman, above n 56, 143; also cited in Wood and Newton, above n 135, 339.
137 Still, Leonie V, Where to from Here? The Managerial Woman in Transition (1993); also cited in Wood and Newton, above n 135, 339. See: findings on solicitors with children – Chapter 3, Section 3.2 A Snapshot of the Queensland Profession, p 3-2, esp Graph 3.2: Presence of children by sex and location of firm and Graph 3.3: Presence of children by sex and position within firm, at p 3-8, 3-9.
139 Wood and Newton, above n 135, 339.
When a senior solicitor refers to women making a *supreme sacrifice* to achieve, there are multiple layers of assumptions around a childless ‘choice’ being one that is ‘forced’ on women, and the belief that high-level professional participation and child rearing are not compatible. It is also open to a reading that ‘sacrificing’ children for career is a deviant stance, one that a ‘normal’ woman would not choose in a society that expresses disquiet about women who remain child-less rather than child-free.

Women with children who do return to work may also be viewed with surprise or suspicion. One female solicitor spoke of the reactions her solicitor husband received within his own firm when he mentioned she would be returning to her career after the birth of their child, because her *career was important to her. They were all terribly surprised.* Assigning women to stereotypical and outdated roles allows discriminatory and sexually harassing attitudes and behaviours to become entrenched. As a result, these are often ‘invisible’ and unremarked.

Survey participants and interviewees reported numerous examples of inappropriate behaviours and outmoded ways of viewing female solicitors, but there was also a regular refrain that those subjected to this behaviour *weren’t prepared to complain because they wanted to keep working.* Members of the Queensland Law Society can point to lack of formal complaints to support a view that discriminatory practices may have existed in the past, but that they no longer form part of the modern legal firm. Some Society staff privately expressed frustration that lack of complaints means they have no grounds for professional action.

A picture begins to develop of some women in the legal profession being regarded as ‘other’ than a male norm or standard. Once inside legal workplaces they may be relegated to traditional roles that mitigate against them being viewed as serious contenders for advancement. While these women, and some of their male colleagues, struggle with stark choices between family or career, they are conscious they need to

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141 Wood and Newton, above n 135, 339. Or, in the case of the high profile politician ‘barren’ – see: above n 10.
142 I(f)44: 8 [woman – early 30s – senior associate – commercial - city].
143 I(f)71: 3 [woman – 50s – senior positions in private practice and government – metropolitan].
‘keep their heads down’ and, if possible, avoid unfavourable attention. It is in this context that the next Section turns to the specific policy and practice situation within Queensland legal workplaces as reported by the research participants.

4.7 INSIDE LEGAL WORKPLACES

One woman opined that the Queensland profession was more aware of what’s happening elsewhere and there was no longer the same ability to have rigid, anti-woman practices, although there still remained a great many things to be done especially by way of an attitudinal commitment to addressing the issue of women inside the private profession. One male solicitor expressed concern that where discriminatory and exclusionary practices endured, the resulting culture must disadvantage women. He said the profession was not only losing the talent, we’re losing the different influence [that women can bring].

Survey participants were asked whether they had ever encountered problems in their workplace (either personally or aware of someone else) related to inappropriate questions when interviewed for positions, discriminatory work practices, sexual harassment, and/or unfair preference in allocation of work/clients. Women were significantly more likely to answer this question in the affirmative than were their male colleagues. The following Table 4.3 depicts the results from this survey question—

Table 4.3: Q14 - Problems at work

<table>
<thead>
<tr>
<th>Q14 Have you ever encountered problems in your workplace ...</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>33</td>
<td>30.84</td>
</tr>
<tr>
<td>No</td>
<td>74</td>
<td>69.16</td>
</tr>
<tr>
<td>Total</td>
<td>107</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Participants in the survey and in the interview phases gave numerous examples of inappropriate questions during interviews. Many of these appear throughout this

144 If(f)71: 10-11.
145 If(m)36: 26 [man – 40s – partner – metropolitan].
146 MW-U=3939.00 Z=-3.40 p=0.001. A number of women and men gave examples and/or made comments at this survey question, some saying ‘no’ to current work problems but describing discriminatory situations in previous or other workplaces.
thesis, but other typical examples included women, and occasionally men, variously being asked about a spouse’s work; a sibling’s school; religion, and pregnancy and family plans.

There were frequent examples of inappropriate and improper workplace behaviours and practices. Solicitors detailed examples of colleagues being singled out because of personal attributes from breast size, to hair colour, or even names. Some solicitors reported instances of bullying. Some said discriminatory and sexually harassing behaviours could be client driven, as in –

preference for male lawyers in male-dominated client organisations – overt! and harassment from clients (inappropriate touching, comments, etc). I don’t feel threatened, just angry!

Various practitioners indicated they saw measures to combat discriminatory practices and behaviours as token only: I think there’s some lip service given to gender equality, but it doesn’t always translate to reality in the working world. One regional principal described her experiences in previous workplaces: I’ve seen a lot more tolerance of hangovers than I’ve seen tolerance of morning sickness …. you definitely see that.

Survey participants were asked to indicate whether or not their workplace had policies in respect of discrimination, sexual harassment or workplace grievances. High percentages of women and of men said they did not have a particular workplace policy, or did not know of such a policy. The survey data are summarised in the following Table 4.4. Women were significantly more likely than men to report they

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147 I(f)40: 3 [woman – 30s – partner – regional].
148 F(98)S at Q14 Have you ever encountered problems in your workplace …? M(74)S at Q14 Have you ever encountered problems in your workplace …?; F(104)S at Q14.
149 Shelf company named to reflect a woman’s large breasts: F(78)S at Q14.
150 Junior solicitor had blonde remarks made to her; there was a young graduate who had an unusual name he was asked if his parents were hippies – I(f)44: 16 [woman – metropolitan: describing attitudes towards junior practitioners]. A colleague also related an anecdote about a young male solicitor from the Middle East and how solicitors in his firm referred to him as ‘Osama’ (a reference to international terrorist Osama bin Laden).
151 For example: M(26)S at Q 14.
152 F(93)S at Q14 (exclamations hers).
153 I(f)51: 28 [woman – 50s – partner – regional].
154 I(f)43: 20.
either did not have, or did not know whether they had, a grievance policy.

Table 4.4: Q14 – Availability of workplace policies

<table>
<thead>
<tr>
<th>Q14 – Availability of workplace policies</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td><strong>Anti-discrimination policy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>65</td>
<td>59.63</td>
</tr>
<tr>
<td>No</td>
<td>18</td>
<td>16.51</td>
</tr>
<tr>
<td>Not known/applicable</td>
<td>26</td>
<td>23.85</td>
</tr>
<tr>
<td>Total</td>
<td>109</td>
<td>100.00</td>
</tr>
<tr>
<td><strong>Sexual harassment policy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>61</td>
<td>57.55</td>
</tr>
<tr>
<td>No</td>
<td>20</td>
<td>18.87</td>
</tr>
<tr>
<td>Not known/applicable</td>
<td>25</td>
<td>23.58</td>
</tr>
<tr>
<td>Total</td>
<td>106</td>
<td>100.00</td>
</tr>
<tr>
<td><strong>Workplace grievance policy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>41</td>
<td>37.96</td>
</tr>
<tr>
<td>No</td>
<td>32</td>
<td>29.63</td>
</tr>
<tr>
<td>Not known/applicable</td>
<td>35</td>
<td>32.41</td>
</tr>
<tr>
<td>Total</td>
<td>108</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Even where discrimination or sexual harassment policies existed, there was a strong likelihood practitioners could not access a grievance policy to lodge complaints. I argue the lack of (or even solicitors’ lack of knowledge of) formal grievance policies is symptomatic of a culture where complaints are not encouraged or treated seriously. Some practitioners said the lack of appropriate workplace policies to assist in countering workplace discrimination and harassment was endemic, entrenched in the way law firms work, such that they don’t recognise that it’s happening.¹⁵⁷ One senior male practitioner expressed concern at the low numbers of firms who had workplace

¹⁵⁶ MW-U=4227.00  Z=-2.190  p=0.028. (Women – no policy (N=32, 29.09%) or did not know (N=37, 33.64%) compared to men – no policy (N=40, 41.67%) or did not know (N=14, 14.58%) (MW-U=4422.00  Z=-2.1470  p=0.032). Men were much more likely (68 percent) to report that an anti-discrimination policy was provided to all on joining than were women (46.16 percent) (MW-U=1272.50  Z=-2.21170  p=0.027). Women were significantly more likely (83.61 percent) than men (63.46 percent) to record that their firm’s sexual harassment policy was in written form (MW-U=1275.00  Z=-2.3491  p=0.019). Women were far less likely than men to report that a workplace grievance policy had been provided to all on joining the organisation (Women – policy provided to all (N=22, 53.66%) compared to men – policy provided to all (N=33, 78.57%) (MW-U=654.50  Z=-2.2574  p=0.024), with women more likely to report that either a grievance policy was not provided to all, or that they did not know whether or not it was provided.

¹⁵⁷ If(f)34: 18 [woman – 30s – principal – part time – regional].
policies and commented that we should be much better at doing that.\textsuperscript{158} But policies do not exist in a vacuum, ‘[t]hey are embedded in real organizations, and their effectiveness is influenced by organizational climate’.\textsuperscript{159} It is also unclear whether any Queensland Law Society policy/ies and procedures are available to a potential complainant in the event that their firm had no avenues for complaint, or where the complaint was against a senior practitioner or partner in the firm.

A senior male practitioner, who had been a partner in a large regional firm for many years and had worked in a variety of metropolitan and regional firms throughout the State, had no hesitation in describing a sexually charged atmosphere within the profession: If you’ve got a male dominated profession, [men] get pretty confident, and complacent if you like, and they’ll push the boundaries further than they should. He described workplace policies to deal with sex discrimination and sexual harassment, particularly in some large firms, as all a bit of a joke really, because often someone’s appointed to one of those positions [as a grievance officer] and they can be the worst offender. He said: I’m sure they’re beautiful policies, well worded, fantastic. But elimination of discrimination and harassment is not happening. He expressed a strong view that discrimination and harassment, in some sections of the private profession at least, was contributing to women exiting the profession.\textsuperscript{160}

My survey also interrogated whether participants’ organisations had a nominated person whom solicitors could go to confidentially discuss any problems related to their work, their ability to cope with work demands and pressures, or their career plans. Less than half (43 percent of women and 33 percent of men) reported the existence of such a person, as the following Table 4.5 depicts –

\textsuperscript{158} It(m)75: 10 [man – 50s – former sole principal – metropolitan].
\textsuperscript{159} Bisom-Rapp, Susan, Stockdale, Margaret S and Crosby, Faye J, ‘A Critical Look at Organizational Responses to and Remedies for Sex Discrimination’ in Crosby, Stockdale and Ropp, above n 89, 273, 282.
\textsuperscript{160} It(m)42: 8-9 [man – 40s – employed solicitor – former partner - now regional].
Table 4.5: Q14 – Availability of nominated person

<table>
<thead>
<tr>
<th>Q14 – Availability of nominated person to discuss problems</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>47</td>
<td>43.12</td>
</tr>
<tr>
<td>No</td>
<td>46</td>
<td>42.20</td>
</tr>
<tr>
<td>Not known/applicable*</td>
<td>16</td>
<td>14.68</td>
</tr>
<tr>
<td>Total</td>
<td>109</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Table Note: For small single solicitor practices, for example, this question may have been answered ‘not applicable’ (although even small practices need some mechanism in place for use by support staff).

Participants were asked whether they would feel comfortable in approaching such a nominated person to raise issues or discuss problems. Table 4.6 following sets out the survey data generated by this question –

Table 4.6: Q14 – Approachability of nominated person

<table>
<thead>
<tr>
<th>Q 14 – Approachability of nominated person to discuss problems</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Would approach</td>
<td>34</td>
<td>61.82</td>
</tr>
<tr>
<td>Would not approach</td>
<td>21</td>
<td>38.18</td>
</tr>
<tr>
<td>Total</td>
<td>55</td>
<td>100.00</td>
</tr>
</tbody>
</table>

A number of women and men gave reasons as to why they would not approach any nominated person. These centred around a lack of trust in the nominated person;\(^{161}\) the inappropriateness of the nominated person for other reasons;\(^{162}\) the lack of appropriate formal procedures to follow;\(^{163}\) a lack of confidence in in-house human resource departments;\(^{164}\) the potential damage to reputation and career prospects if a solicitor spoke up;\(^{165}\) and a general reluctance to express any inability to cope.\(^{166}\)

One measure of the need for, and importance of, workplace policies and grievance or

\(^{161}\) M(94)S at Q14 Have you ever encountered problems in your workplace …?
\(^{162}\) F(2)S at Q14; F(34)S at Q14; F(72)S at Q14.
\(^{163}\) F(104)S at Q14.
\(^{164}\) F(78)S at Q14.
\(^{165}\) F(110)S at Q14.
\(^{166}\) M(45)S at Q14.
complaint procedures is how people believe they are treated at work. I asked Queensland solicitors to rate their perceptions of how they were treated in their workplaces by administrative/support staff; by other lawyers in the workplace; by outside professionals (including, for example, outside lawyers, accountants, bank managers, police officers, engineers, etc); and by clients.\textsuperscript{167} Members of the same group will, of course, not necessarily experience situations in the same ways – ‘[p]eople have differing experiences of what it feels like to be socially included or excluded, successful or subordinated, vocal or silenced’,\textsuperscript{168} and there were distinctions in women and men’s responses as to how they perceived they were treated.

Participants were asked to consider a number of statements and then to indicate on a scale of 1 (never) to 5 (always) how that particular aspect of workplace treatment applied in their situation. For analysis purposes, answers of 4 and 5 (almost always and always) were grouped together, and answers 1, 2 and 3 (never, almost never, sometimes) were grouped together. Survey findings relating to reported treatment specifically by administrative staff are set out in Table 4.7.1 below.

Male solicitors were significantly more likely than their female colleagues to report that they were always or nearly always treated with respect and cooperation,\textsuperscript{169} that their queries were answered,\textsuperscript{170} that their requests were acted on,\textsuperscript{171} and that they were made to feel welcome and included.\textsuperscript{172} For ease of reference, these items are highlighted in bold in Table 4.7.1, which is set out on the following page –

\begin{itemize}
  \item Survey Q10 How do you feel you are treated in your workplace (by support staff, other lawyers, other professionals, clients)?
  \item Ramazanoglu, Caroline (with Holland, Janet), Feminist Methodology - Challenges and Choices (2002) 111.
  \item MW-U=4638.00 Z=-2.415 p=0.016.
  \item MW-U=4342.00 Z=-2.448 p=0.014.
  \item MW-U=4521.00 Z=-2.205 p=0.028.
  \item MW-U=4293.00 Z=-2.850 p=0.004.
\end{itemize}
Moving from administrative and support staff, solicitor participants were asked to consider the treatment they received from other lawyers within their own legal firms. The relevant data are set out in Table 4.7.2. Men were significantly more likely to report that their queries were always or almost always answered by other lawyers in their firm. They were significantly more likely than their female colleagues to report that other lawyers always or nearly always made them feel welcome and included, as well as in informal social activities. Men were also more likely than were female practitioners to be consulted on workplace decisions. These significant differences are highlighted in bold within the Table for ease of reference. The Table appears on page 4-45.

173 MW-U=4105.50 Z=-2.073 p=0.038.
174 MW-U=3728.00 Z=-2.829 p=0.005.
175 MW-U=3760.00 Z=-2.411 p=0.016.
176 MW-U=3552.00 Z=-3.041 p=0.002.
There was only one aspect of treatment by outside professionals (be it lawyers from other firms, accountants, engineers, and the like) where there was a significant difference in male and female responses. Men were more likely than women to feel other professionals always, or nearly always, treated them with respect and cooperation. The findings are detailed in Table 4.7.3 which follows Table 4.7.2 (which appears on the next page) –

\[177\] MW-U=4644.50  Z=-2.020  p=0.043.
**Table 4.7.2: Q10(2) – Perceived workplace treatment by other lawyers**

| Q10 Perceived workplace treatment by: (2) other lawyers | FEMALES | | MALES | |
|--------------------------------------------------------|---------|---------|---------|
| *With Respect and Cooperation*                        |         |         |
| - Always, almost always                                | 93      | 86.11   | 82      | 91.11   |
| - Never, almost never, sometimes                        | 15      | 13.89   | 8       | 8.99    |
| Total                                                  | 108     | 100.00  | 90      | 100.00  |
| * Work is Valued, Treated as Member of a Team          |         |         |
| - Always, almost always                                | 82      | 75.93   | 76      | 86.36   |
| - Never, almost never, sometimes                        | 26      | 24.07   | 12      | 13.64   |
| Total                                                  | 108     | 100.00  | 88      | 100.00  |
| * Subjected to Unfair Criticisms                       |         |         |
| - Always, almost always                                | 11      | 10.28   | 16      | 18.60   |
| - Never, almost never, sometimes                        | 96      | 89.72   | 70      | 81.40   |
| Total                                                  | 107     | 100.00  | 87      | 100.00  |
| * Receive Share of Interesting Challenging Work        |         |         |
| - Always, almost always                                | 75      | 69.44   | 70      | 80.46   |
| - Never, almost never, sometimes                        | 33      | 30.56   | 17      | 19.54   |
| Total                                                  | 108     | 100.00  | 87      | 100.00  |
| * Queries Readily Answered                             |         |         |
| - Always, almost always                                | 77      | 71.30   | 70      | 80.46   |
| - Never, almost never, sometimes                        | 31      | 28.70   | 17      | 19.54   |
| Total                                                  | 108     | 100.00  | 87      | 100.00  |
| * Feel Welcome, Included                               |         |         |
| - Always, almost always                                | 74      | 69.81   | 74      | 87.06   |
| - Never, almost never, sometimes                        | 32      | 30.19   | 11      | 12.94   |
| Total                                                  | 106     | 100.00  | 85      | 100.00  |
| * Comfortable Raising Non-Work Issues                  |         |         |
| - Always, almost always                                | 42      | 38.89   | 37      | 43.53   |
| - Never, almost never, sometimes                        | 66      | 61.11   | 48      | 56.47   |
| Total                                                  | 108     | 100.00  | 85      | 100.00  |
| * Need to work harder, take less time off              |         |         |
| - Always, almost always                                | 52      | 48.60   | 36      | 42.35   |
| - Never, almost never, sometimes                        | 55      | 51.40   | 49      | 57.65   |
| Total                                                  | 107     | 100.00  | 86      | 100.00  |
| * Included in Informal Social Activities               |         |         |
| - Always, almost always                                | 48      | 45.28   | 54      | 62.79   |
| - Never, almost never, sometimes                        | 58      | 54.72   | 32      | 37.21   |
| Total                                                  | 106     | 100.00  | 86      | 100.00  |
| * Consulted on Workplace Decisions                     |         |         |
| - Always, almost always                                | 55      | 50.93   | 61      | 72.62   |
| - Never, almost never, sometimes                        | 53      | 49.07   | 23      | 27.38   |
| Total                                                  | 108     | 100.00  | 84      | 100.00  |
| Q10 Perceived workplace treatment by: (3) other professionals | FEMALES | | MALES | |
|------------------|---------|---------|---------|
| * With respect & cooperation |         |         |         |
| - Always, almost always | 82  75.23 | 83  86.46 |
| - Never, almost never, sometimes | 27  24.77 | 13  13.54 |
| Total | 109  100.00 | 96  100.00 |
| * Work Valued |         |         |         |
| - Always, almost always | 73  69.52 | 72  77.42 |
| - Never, almost never, sometimes | 32  30.48 | 21  22.58 |
| Total | 105  100.00 | 93  100.00 |
| * Consulted, Invited to Contribute |         |         |         |
| - Always, almost always | 58  53.70 | 56  60.22 |
| - Never, almost never, sometimes | 50  46.30 | 37  39.78 |
| Total | 108  100.00 | 93  100.00 |
| * Ignored, Isolated |         |         |         |
| - Always, almost always | 9  8.26 | 6  6.59 |
| - Never, almost never, sometimes | 100  91.74 | 85  93.41 |
| Total | 109  100.00 | 91  100.00 |
| * Included in social activities |         |         |         |
| - Always, almost always | 37  34.26 | 36  38.71 |
| - Never, almost never, sometimes | 71  65.74 | 57  61.29 |
| Total | 108  100.00 | 93  100.00 |

Finally, I asked solicitors how they perceived they were treated by clients. Although women were somewhat more likely than their male counterparts to report they were subject to unreasonable demands from clients, there were no statistically significant differences between women and men in how they perceived they were treated at work by their clients. However, in terms of issues of workplace stress (which I will canvass in more detail later in this thesis) it is worthy of note that more than 30 percent of the women and men surveyed believed they were subjected to unreasonable client demands, and thought that their clients wanted ‘something for nothing’. Less than three quarters of practitioners believed clients always, or nearly always, valued their work.178

The following Table 4.7.4 summarises the findings –

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178 See, for example: thesis Chapter 5, Section 5.3 The Price is Stress, p 5-8ff.
I argue that the power and persistence of outdated, stereotypical ways of viewing professional women, including legal women, provide a key tool to our understanding of legal workplaces, and of the consequences for many such workplaces continuing to operate while some of their own trained and competent practitioners are ignored, under utilised, not integrated into work teams, or simply unwelcome. My research demonstrates that many Queensland solicitors inside today’s legal profession have a strong sense of a legacy of struggle and difference, of dissonance and distrust.¹⁷⁹ They can have a passionate commitment to their profession, but feel isolated and unwelcome within it. This sense of discomfort was manifest in research interviews.

Within the context of the interviews, it was apparent that a number of women were anxious not to be seen as troublemakers of some kind. I also recognised men who

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¹⁷⁹ Thornton, above n 68, book title.
were sympathetic to any disadvantage experienced by their female colleagues, and keen to demonstrate their credentials in working for a discrimination free profession. I also noted that for some men, a level of discomfort with outspoken or active women was symptomatic of a broader discomfort with women as professional equals. Some men were unsure how to refer to women collectively. Some seemed to seek my tacit approval or agreement to their use of the androgynous *guys*, the avuncular *girls*, the quaint *lady lawyers*, the hesitant *ladies*, or the uncertain *females*.180

These examples may be easily dismissed as mere social awkwardness. But, lack of ease with female colleagues has serious implications when some men report a reluctance to mentor junior female practitioners for fear of being accused of sexual harassment.181 One senior woman confirmed some men held these views –

*A couple of senior male practitioners I had a lot of time for. I’ve seen them in action mentoring young men, and almost being intimidated by females, or perhaps being scared that if they did the same thing with females they might be accused of harassment ... They’re just uncomfortable with someone other than somebody of the same sex and the same background.*

[woman – 50s – various senior positions in profession]182

Mentoring is vital for women if they are to advance within their profession.183 While there are men and women who report productive mentoring relationships between senior men and junior women, this remains an area of dissonance.

A number of research participants stated they saw no gender bias within the profession, but then, at another stage of the interview, recounted detailed examples of discrimination and disadvantage affecting women, either themselves or colleagues.

180 Reminiscent of ‘ducks on the pond’ – an Australian phrase men used to warn each other when women appeared in the shearing sheds, and reflecting the general discomfort men experienced when women entered on to traditional male territory: Summers, Anne, *Ducks on the pond – an autobiography 1945-1976* (1999) 173.
181 I(m)35: 16-18 [man – 30s – partner – metropolitan]. Also: I(m)41: 19, 18 [man – 30s – employed solicitor – regional].
182 I(f)70: 3. Also: I(f)32: 14 [woman – 40s – part time - metropolitan].
This internal inconsistency was typified by a female consultant who, during an interview, stated it was understandable an employer would want to ask a young woman: “Are you planning to get pregnant?” because there are operational issues [the employer] needs to address. Later in the same interview, this research participant expressed the strong view that men and women share equally in family responsibilities: Men are now having to deal with family responsibilities as much as women. Where both parents work, the obligation to attend to sick children, or aging parents, all those sorts of things, is shared more equally. It’s not seen now just as a woman’s burden.

In another sense, the lack of any conscious recognition or acknowledgement of bias or discriminatory practices within the profession typified the reluctance of practitioners to ever go public, their determination to keep their heads down, and the proffered hope that ‘things will change with more women entering the profession’. It also parallels the experiences of entrepreneurship researcher Patricia Lewis, who found some women business owners treated entrepreneurship as gender-neutral, while at the same time seeking to conceal its gendered nature. Lewis concluded that these women were ‘trying to avoid being identified as different from the masculine norm of entrepreneurship’; while Ellen Pansky argued that ‘the statistics belie the belief held by most women attorneys that they have not been discriminated against personally’ (emphasis in original).

It may be that women seek to protect themselves psychologically by denying evidence of personal discrimination and avoiding being labelled as a ‘complainer’. It is difficult
for individuals to lodge formal complaints, even in situations where organisations have sound policies and accessible complaint processes. Various researchers have concluded that ‘discrimination and harassment in organizations is likely to be grossly underreported … especially if management is not viewed to be sympathetic to such concerns’.  

Peter Glick and Susan Fiske argue that a masculinist culture will thrive where women are relegated to subordinate organisational roles. Such a cultural context, they conclude, ‘easily primes stereotypic prejudice and behaviour, encouraging sexual harassment and underrepresentation of women in significant roles’. Kanter posited that ‘masculine’ or ‘feminine’ images that seemed embedded in roles within organisations were ‘inherent neither in the nature of the tasks themselves nor in the characteristics of men and women; instead, they are developed in response to the problems incumbents face in trying to live their organizational lives so as to maximize legitimacy or recognition or freedom’. Glick and Fiske acknowledge the work of Kanter and suggest that stereotypical roles act as both a ‘millstone’, by anchoring perceptions of women to preconceived, often long held, biases; and a ‘fence’, confining women to narrow roles.

Kanter argued that women can develop attitudes that are not necessarily characteristic of the group or category of ‘women’, but that are ‘universal human responses to blocked opportunities’. Where women were perceived as less motivated or less committed, Kanter identified in her research that this was indeed likely to be a result of the fact that they were given less opportunity. Decades on, we also understand that ‘opportunity’ needs to be about flexibility and new ways of working. In the 21st century we can no longer look simply at a person’s physical capacity to comply with the demands of the job, but rather at a more meaningful and contextual compliance. Both the law and best practice now recognise that a determination to do the job in a

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188 Glick and Fiske, above n 89, 155, 177. See: above n 84 for instances where women were anxious to dismiss incidents of sexual harassment as minor.
189 Glick and Fiske, above n 89, 178.
190 Ibid, 176.
191 Kanter, above n 3, 5.
192 Glick and Fiske, above n 89, 177.
193 Ibid, 159.
194 For detail of critiques of Kanter’s work see: above n 109.
particular way ‘based on historical grounds’ and ‘an intuitive feeling [that any other way is] unworkable’ will be liable to close scrutiny.\textsuperscript{195}

Within this mix, the historical role of sport as part of ‘the way we do things’ persists in many quarters within the profession and effectively sets up another exclusionary mechanism that continues to operate against many women. When describing the culture of the Australian legal profession, (then) High Court Justice Mary Gaudron spoke of the difficulty for women in challenging the codes of conduct ‘… derived, as often as not, from rules developed on the playing fields of Eton for the male members of the British aristocracy …’\textsuperscript{196} While Queensland legal practices may seem far removed from Etonian playing fields, sport as participant or spectator proved to be a strong theme in my research. The next Section turns to the role of sport in the lives of Queensland solicitors.\textsuperscript{197}

4.8 PART OF THE TEAM

Both women and men reported through the survey that they felt equally, or more, able to access flexible working arrangements to attend to sporting interests, than they felt able to use a range of other policies, including those that were specifically family related.\textsuperscript{198} Men were significantly more likely than women to report that they utilised sport as a coping strategy to manage work pressures.\textsuperscript{199} Research interview participants often questioned the thinking behind this willingness to create flexibility

\textsuperscript{195} See: Bogle v Metropolitan Health Service Board (2000) ¶EOC 93-609. This case is discussed in more detail in Chapter 5.

\textsuperscript{196} Gaudron, Justice Mary, ‘Speech to Launch Australian Women Lawyers’ (Melbourne, 19 September 1997) 16-17.

\textsuperscript{197} See: details of findings in Chapter 5, esp Table 5.6: Q11 – Workplace policy availability and accessibility, p 5-41. Among the solicitors surveyed, workplace flexibility for sport recorded the highest level of accessibility (men) and second highest (women) out of a number of policies/benefits.

\textsuperscript{198} Survey Q11 – Do the following [policies] exist in your workplace? For discussion of this part of the survey see: Chapter 5, esp Section 5.9 Rhetoric and Reality, p 5-36ff. It should be noted the design of the question in this section of the survey was not without ambiguity. Varying possible interpretations of the meaning of sport were raised directly by practitioners in the subsequent in-depth interviews. But, survey findings remain strongly indicative of the ongoing privileging of sport within the private profession because of the nature of the observations made by a wide range of interviewees, as are detailed in this, and other, sections of the thesis.

\textsuperscript{199} See: Chapter 5, Section 5.4 Survival Strategies, p 5-11, esp Table 5.2: Q17 – Coping strategies used by practitioners, p 5-13.
for sport, but not for families. Some saw it as evidence of an *outmoded philosophy*;[^200] a *blokey* and *masculinist* culture;[^201] the fact decision makers were still male;[^202] and a still pervasive culture within both legal firms and the wider community.[^203]

Some suggested that the relevant sport was the highly competitive sport at a representative national or Olympic level, where participation was seen as *having kudos attached to the firm*[^204] and where some firms had elite athlete leave policies and arrangements in place.[^205] Other practitioners suggested that sport was viewed as important to match corporate sector employment benefits;[^206] or connected to the need for lawyers to remain fit to manage workplace stress; or to meet personal desires for a healthy lifestyle.[^207] One partner conceded a client networking-sport nexus, but said sport was more about a *positive personal experience* with practitioners attending gym, going running, or leaving early for netball practice. He expressed concern that sport could be regarded as more important than family responsibilities, stating he believed such an emphasis would be a *negative* in the lives of solicitors.[^208]

The significance of sport as a client entertainment and networking tool,[^209] or as a natural meeting place for men, was recognised in many interviews, as this extract illustrates –

> Every male partner [in town] played rugby. Half of them played squash. Sport was sport. They saw that as a get together and have a few drinks and

[^200]: *I(m)72: 7 [man – 40s – partner – metropolitan].*
[^201]: *I(m)30: 17 [man – 30s – employed solicitor – metropolitan]; I(f)77: 12 [woman – 50s – now senior government position].*
[^202]: *I(m)75: 16 [man – 50s – former sole practitioner]; I(f)33: 11 [woman – 50s – partner – regional].*
[^203]: *I(f)76: 16 [woman – 30s – employed solicitor – metropolitan]; I(m)42: 19.*
[^204]: *I(f)76: 15 [woman – 30s – employed solicitor – metropolitan].*
[^205]: *I(f)50: 22 [woman – 40s – senior associate – metropolitan].*
[^206]: *I(m)75: 16, 17 [man – 50s – former sole practitioner].*
[^207]: *Typical examples were given by: I(f)31: 17 [woman – 30s – partner – metropolitan office of regional firm]; I(m)35: 21 [man – 30s – partner – metropolitan];*
[^208]: *I(m)36: 21, 20 [man – 40s – partner – metropolitan].*
meet your mates and talk. Whereas the kids with the chicken pox, well there’s no potential for any fun there [laughter].


Others saw sport as an entrée into the profession because of the connections it created and the doors it opened – the old rugby thing.²¹¹ Organised sport has been seen as giving men ‘from all backgrounds a means of status enhancement that is not available to young women’, hence supporting the role of men as legitimate leaders and controllers of public life.²¹² One man who had attained very senior status in the profession openly acknowledged his sporting connections were a career entry card, stating that playing football and attendance at a particular school had paved his way into the solicitors’ branch of the Queensland profession. He also expressed the view that this was still occurring.²¹³

One regional city partner offered these thoughts –

You go to golf. And you’re in this club and you’re in that club. And you know everybody even if you haven’t been living in the town. The men seem to slide in to the roles. They seem to be introduced around. And it is harder for women to make their way in the profession. You get yourself known as a man. You get scooped up by the boys. You get taken off to drinks to meet Huey, and Louie, and Dewey, by mates here, there and everywhere. You get taken to the golf. You get, “Let’s go and play tennis” with this one and that one. That doesn’t happen if you’re a woman. You don’t get invited to the golf.

[woman – 50s – partner – regional]²¹⁴

Various practitioners expressed strong views that sport was an area where the exclusion and marginalisation of women continued. Women were shut out from important informal workplace knowledge networks, and denied access to major clients.²¹⁵ On the other hand, women were at risk of being seen as ‘non-team players’ because of an inability to attend after-hours or weekend sporting activities (assuming they were invited) due to ongoing family responsibilities. One woman’s struggle to incorporate client networking activities and family responsibilities was typical –

There’s a lot of cricket. In my case it’s been the football a lot – long

²¹⁰ If(34): 25.
²¹¹ If(39): 19 [woman – 50s – principal – regional].
²¹³ Im75: 3.
²¹⁴ If(51): 9 (emphasis hers).
²¹⁵ If(70): 10 [woman – 50s – employee – regional].
boozing sessions, which obviously you can’t do if you’ve got to go home and look after little people.
[women – 30s – senior associate – metropolitan]²¹⁶

Others acknowledged a practitioner wanting to climb the corporate ladder could not afford to miss valuable networking opportunities, as one woman detailed in relation to football matches or a corporate box at the cricket. She said these activities were seen as important, but girls just look so out of place there, but that’s where the hard work’s being done. It’s very hard for a woman to get into that. She pointed out that a day off to attend cricket was seen as a good use of your working time, while time off to see a child at kindergarten or in a Christmas play was not good use of your working time – it’s damned inconvenient – it’s like, “Where are they? Are their kids sick? Again?”²¹⁷

While not everyone saw this commitment to sport as acceptable in 21st century legal practice,²¹⁸ there was a broad based acknowledgement that sport was a ‘special category’ as outlined by this solicitor –

There’s a lot of talk about having a life and being a rounded person, having other interests outside the law. But I don’t know how that translates into reality unless it’s got something to do with sport.
[women – 30s – employed solicitor – metropolitan]²¹⁹

Even where women were good at sport, enjoyed sport, and were keen to participate, that was often not enough to carry them across the line, or win them a place on the team. One woman recalled attending a legal conference and registering to take part in the associated golf competition. She said the partner who headed her work section was: most put out, and told her, quite clearly, that she should be having a social afternoon with the ladies; or, alternatively, play a social game of golf somewhere else. So it’s that old boys’ club thing: “This is for us boys.”²²⁰ Another woman suggested many women would like an opportunity to participate in events such as charity golf days, but felt they would let the side down if they were not experienced

²¹⁶ I(f)44: 22.
²¹⁷ I(f)51: 10, 26 [woman – 50s – partner – regional] (emphases hers).
²¹⁸ I(m)72: 7-8 [man – 40s – partner – metropolitan]; I(f)52: 15 [woman – 40s – partner – regional].
²¹⁹ I(f)76: 2.
²²⁰ I(f)80: 13-14 [woman – 30s – former associate – regional]. This was not an isolated scenario: I(f)40: 11 [woman – regional: describing opposition to woman playing golf].
players. She suggested: *They need to be specifically invited [to] join the team [and have] the rules explained.*

Golf is not a sport that requires superior physical strength or a particular masculine style physique. It is widely used for business through client entertainment, inter- and intra-professional competitions, charity days, marketing and sponsorship activities. Women continue to report being actively or covertly discouraged from participation. This is not unique to the legal profession, with one study finding women recreational golfers reported similar participation barriers to those identified by women in predominantly male occupations, namely: heightened visibility, stereotyping, and a range of social exclusion techniques.

One woman described her attempts to get included, as a spectator, in some of her firm’s sporting networking activities –

*The men are the boxes at the Gabba while the women are a dinner. It’s still a bloke thing. I’ve put my hand up a number of times and said, “Excuse me. I like the cricket”. And they go [mockingly], “Oh yes”. [woman – 50s – litigator – metropolitan]*

One high profile senior practitioner said he saw a change, both within the broader community and within individual legal practices. Within his own large national firm, he saw a *swing back* in part because: *people are saying we’ve over emphasised sport and it should be confined to after work.* However, as long as sporting activities hold some privileged place within a profession where they are used, sometimes extensively, for a range of ancillary professional purposes, equality of professional participation can never be complete while a substantial sector of that profession experiences exclusion. In some situations it may be no more than inadvertence or ignorance, although it can certainly be argued that the legal profession bears a higher onus than non-lawyers to comply with anti-discrimination legislation and to promote

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221 If(34): 24-25 [woman – 30s – principal – regional].


223 If(38): 3. The Gabba is the international standard cricket ground located in Brisbane. The interviewee conflated the practitioners with the activities considered appropriate for men as opposed to those considered appropriate for women. Hence, men were “the boxes” and women were “a dinner”.

224 I(m)78: 13-14 [man – 50s – senior partner – metropolitan].
inclusive and equitable workplace practices. In other cases, there is a deliberate use of sport to exclude, much in the spirit of men-only clubs being used for professional functions.

I argue that the particular role of sport within the profession forms an integral part of an overall professional culture, which may be a bygone memory in some progressive and well-managed firms, but which clearly persists and thrives in others. The peak professional body, the Queensland Law Society, has regularly tied conferences and continuing professional education activities to sporting activities, particularly football and cricket. Women’s efforts to move into sport-based networks often brings them into collision with the traditional stereotypes of womanhood and what may be viewed as ‘suitable’ occupations for women.

In the context of a professional culture that can be inimical to some women and their aspirations, I turn to the relatively recent human resource management field of workplace mobbing, and examine how this might serve as a useful way of reviewing and consolidating issues that have arisen in this Chapter.

4.9 BLACK SHEEP AND MILLSTONES

I have discussed how the imposition of stereotypical roles within the Kanterian tradition anchors perceptions of women to preconceived, and often long-held, biases. Glick and Fiske referred to a ‘millstone effect’ that acts to weigh women down and inhibit their full professional participation.

Women recounted many examples of feeling unwelcome within their chosen

225 One typical example was advertising and promotional material sent out for the ‘QLS Paris Law Conference 2007’. The Society was ‘proud to announce’ the proposed conference coincided with the Rugby World Cup, hence providing ‘an opportunity to share your passion for rugby and the law …’ – Queensland Law Society, ‘QLS Paris Law Conference 2007’ – advertising material March 2006.


227 The Queensland based organisation that acts as an advocacy and support group for employees who have been ‘mobbed’ in their workplaces operates under the title Black Sheep. See: <www.workplacemobbing.com>.

228 See: above n 89 and n 192.

229 Ibid.
profession. Many of their stories resonated with research done on the workplace mobbing of individual employees in organisations. Workplace mobbing is defined as the targeting of an individual so as to isolate them and eventually exclude them from a workplace.\(^{230}\) The drive to exclude someone may be tied to discriminatory attributes (such as sex or parental status), but it may not attract any redress under anti-discrimination or sexual harassment legislation,\(^{231}\) because it may be driven solely by a personal dislike of someone’s ‘style’ or ‘approach’, or mere resentment of their presence or ‘difference’.

Targets of workplace mobbing are often high achievers who may have experienced prior marginalisation, and mobbing can occur within organisations that are generally free of any overt workplace violence and are known to espouse high ideals and values.\(^{232}\) Early mobbing research suggested that whistle-blowing behaviours can trigger a mobbing response,\(^{233}\) reinforcing the views of many research participants that there is a real risk in publicly raising concerns about perceived inequities within the private legal profession.

I extend the theory of workplace mobbing of individual target employees inside discrete workplaces, and examine the possibility of profession wide ‘mobbing’ or ‘exclusion’ of a group of outwardly similar individuals (women). I drew on specific individual mobbing characteristics from the work of Kenneth Westhues\(^{234}\) when developing this view of women solicitors within private legal practice. I acknowledge


\(^{231}\) It may attract the provisions of anti-bullying laws. In Queensland this would involve action under Workplace Health and Safety Act 1995 (Qld).


\(^{233}\) See generally: Leyman, Heinz, The Mobbing Encyclopaedia – Bullying; Whistleblowing on line<http://www.workplacemobbing.com/> at October 2004. See also: Lewis, David B (ed), Whistleblowing at Work (2001); de Maria, William, Deadly Disclosures – Whistleblowing and the Ethical Meltdown of Australia (1999).

\(^{234}\) Above n 232. I acknowledge that Westhues himself does not necessarily see mobbing can be ‘enlarged’ beyond individuals within individual workplaces. In my email correspondence with him (October 2004), he describes the factors affecting a number of legal professional women in my research as ‘typical of a discriminatory climate’ which he links to the work of Margaret Heffernan on the stereotypes/roles ascribed to women in contemporary workplaces (see specifically: note xv to Table 4.2: Development of Kanter’s role trap typology for professional/legal women, p 4-28), rather than to another manifestation of mobbing.
that the term ‘mobbing’ as it is currently understood in the literature is limited to the situation of single individuals. However, I have utilised typical mobbing characteristics to develop a framework that identifies a range of discriminatory and exclusionary factors affecting women in private legal practice. The ‘exclusionary effect’ within the legal profession mimics the dynamics of workplace mobbing, with the consequence of each being marginalisation and possible exclusion.

As in workplace mobbing, what I have termed the ‘exclusionary effect’ within the legal profession is caused by a complex interplay of factors that solicitors may encounter not only within individual workplaces, but also in their dealings with staff, colleagues, outside professionals, and professional associations. It is an original way of viewing the status of women in the legal profession, and further research is needed.

In Westhues’ research, mobbers can be bullies, but not necessarily so. Exclusionary scenarios can take on a life of their own and others join in because a ‘group mentality’ can come into play. Some feel it is safer to be with the excluding group than with the target, who is perceived as on the outer and not fitting workplace or group culture. Some may feel dominated by those expressing exclusionary views, or even believe the vague charges (which may be as simplistic as an alleged inability to fit in) against the person targeted. One young male solicitor spoke of the expectations he felt on him to fit with the group driving the dominant, anti-woman culture in his previous workplace.

Nor is it surprising that some women may find it easier to circumvent exclusionary practices by operating on men’s terms. Some women who are complicit in this

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235 Be they ‘mobbed’ by a group of their peers, superiors and/or their junior staff. See: Branch, Sara, Sheehan, Michael James, Ramsay, Sheryl Gai and Barker, Michelle Carmel, ‘Upwards Bullying: Implications for how managers and organisations approach workplace bullying in the future’ (Paper presented at British Academy of Management Conference, St Andrews, 2004).

236 Bullies may want to give others a difficult time in order to show their power, but mobbers ultimately want the target to leave the workplace. Linda Shallcross explains that mobbing refers to ‘covert collective behaviours of “ganging up” and targeting [others] using passive aggressive behaviours …’ – see: Shallcross, Linda, ‘The Workplace Mobbing Syndrome, response and prevention in the public sector’ (Paper presented at the Workplace Mobbing Conference, Brisbane, 16 October 2004), 3. See also: McGinley, Ann C, “Creating Masculine Identities: Harassment and Bullying “Because of Sex”” (Working Paper #07-01 William S Boyd School of Law, University of Nevada, 3 December 2007).

237 I(m)41 [man – 30s – regional].
process have been described as ‘Queen Bees’ who actively separate themselves from their female colleagues and identify with men in their organisation. Male patronage within the legal profession has been described as ‘creating people in one’s own image, perpetuating the status quo, securing conformity, protecting the prevailing ethos and stifling originality of thought’. Patronage was likened to ‘inequality’, ‘discrimination’, and ‘contrary to the interests of justice’, and perhaps ‘if it works for women, it works only for those who are prepared to be moulded by their makers’.

In the following Table 4.8, I list various characteristics identified by workplace mobbing theory together with examples from my research that ‘match’ those characteristics. In situations where these exclusionary factors are in play women receive less than equal treatment and are effectively held back from full professional enjoyment and achievement. As Table 4.8 demonstrates, there are strong parallels between recognised mobbing factors and what I have termed ‘exclusionary factors’.

238 McKenna, Elizabeth Perle, *When work doesn’t work anymore – women, work and identity* (1997) 196; Thornton, above n 68. But, this is perhaps no more than the reverse of Wajcman’s (above n 56) concern that men will appropriate female characteristics when those characteristics are seen as desirable.

It is also true that some women adopt masculine appearances, traits and approaches by way of camouflage to ensure survival in a harsh environment – ‘The perceived need to appear more powerful in order to enhance organizational mobility means selectively borrowing masculine traits or modes of appearance. The padded suit shoulders, the understated colours, the tailored, conservative styling all mimic male dress, and attempt to confer on women the same kind of status men have’: Sheppard, Deborah, ‘Organizations, power and sexuality: The image and self-image of women managers’ in Hearn, J, Sheppard, D L, Tancred-Sheriff, Peta and Burrell, G (eds), *The sexuality of organization* (1989) 5; also: Kennedy, *Sexy Dressing* (1993).)

And should aspiring women lawyers be in any doubt about their need for ‘camouflage' and conformity to assist their entry into, and progress within, the legal profession, one Queensland law school had this advice for students contemplating a job interview –

* Women should wear a suit - matching jacket and skirt/dress, with plain coloured stockings. If you wear knee-highs under pants or a long skirt, ensure that the tops are not visible. It is a good idea to take a spare pair of stockings in case of laddering.
* ... Be aware that if you decide to wear pants ... you risk offending your interviewer/s.

(Griffith University, *School of Law Employment Guide* (2003) 16)

239 See: Gaudron, Mary (Justice), ‘Speech to mark 50th anniversary of Women Lawyers Association of New South Wales’ (Sydney, 13 June 2002) 3.
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<th>NEAL: EXCLUSIONARY FACTORS ACROSS SOLICITORS’ BRANCH OF QUEENSLAND LEGAL PROFESSION</th>
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<td>1. Focus on targeted person rather than on allegedly offensive action/s.</td>
<td>1. Women do not ‘fit’ – they are seen as the ‘problem’ rather than the nature of the profession itself and/or outmoded management practices that make it difficult for women to balance work and family and to achieve.</td>
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<tr>
<td>2. Target is popular, high achiever – probably average or above average performer.</td>
<td>2. Women entering profession are well qualified, hardworking – interviewees described women as often the better candidates – but also reports of women being ‘demonised’.</td>
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<tr>
<td>3. There is a lack of due process.</td>
<td>3. Women report being ‘excluded and marginalised’ while the ‘excluders’ can appear ‘scrupulously fair’ – there is no ‘offence’ to which women can mount a response – policies ad hoc or non-existent.</td>
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<tr>
<td>4. Odd timing by mobbers – taking target by surprise.</td>
<td>4. Some women report incidents of exclusion as being ‘unexpected’ – they are bright, articulate, clever and believed they would compete ‘on equal terms’ – they find themselves excluded from networking and other activities (especially sport, informal networking opportunities).</td>
</tr>
<tr>
<td>5. Resistance to external review.</td>
<td>5. Professional body (Law Society): has not acted on findings in other jurisdictions, has not commissioned any independent research, delayed analysis of survey that questioned practitioners about any unfair treatment; has no grievance policies. Few firms have workable policies.</td>
</tr>
<tr>
<td>6. Secrecy.</td>
<td>6. Matters not raised openly in firms. Society and individual legal firms claim ‘confidentiality’. Recent change re discipline of solicitors or investigation of complaints probably won’t make a difference to ‘in house’ complaints.</td>
</tr>
<tr>
<td>7. Unanimity.</td>
<td>7. Diverse opinion not given a voice – ‘official’ voice of the profession speaks of the ‘way things have been done’ and claims ‘no discrimination’ – leaders of firms speak with ‘male voice’ – women don’t ‘fit’ culture.</td>
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<tr>
<td>8. Fuzzy or vague charges to justify an individual’s exclusion.</td>
<td>8. Men express discomfort with female colleagues – claim clients more ‘comfortable’ with males – say women aren’t ‘interested’ in sport – mentoring avoided as it may be construed as ‘sexual harassment’.</td>
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<td>9. Prior marginalisation.</td>
<td>9. ‘The devil is identified first’ – feminist theory re ‘otherness’ of women – women report less respect and co-operation – excluded from formal and informal networking.</td>
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<tr>
<td>10. Impassioned rhetoric.</td>
<td>10. But not necessarily the rhetoric of ‘attack’, rather the rhetoric of ‘reason’ – making it even more difficult for those who are marginalised to challenge.</td>
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<tr>
<td>11. Back-biting, whispering campaigns, rumours – discredit the target informally.</td>
<td>11. Survey responses show women often unable to trust office grievance procedures because [male] partners would talk ‘behind back’ – ‘lack of trust’ – women seen in narrow roles that discredit them as serious players.</td>
</tr>
<tr>
<td>12. Characteristics ‘fit’ organisations generally free of violence and ‘infused with lofty values’.</td>
<td>12. Legal offices perceived as violence free (but see reports of sexual harassment) – lawyers seen as part of noble profession – strong ideals of justice - in order to ‘fit in’ women inclined to dismiss any discriminatory practices/behaviours as ‘not intentional’.</td>
</tr>
<tr>
<td>13. Where target fights back, it is uneven match.</td>
<td>13. Where target fights back, it is uneven match – practitioners display great reluctance to lodge formal complaints even where mechanism exists – few formal complaints (in Hickie’s Case, complainant lost position).</td>
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I argue that when some or all of these mobbing-style, or exclusionary, factors are present, women (or others within an ‘excluded’ group) are weighed down and unable to participate on an equal footing with their male colleagues.

I have then drawn together the Kanterian role traps discussed earlier in this Chapter, the exclusionary factors developed from the mobbing literature and set out in Table 4.8 above, the fact of ongoing workplace discrimination and sexual harassment as disclosed by my research, and organisational factors of entrenched culture and resistance to change. I have synthesised these into a list of ‘Exclusionary Indicators’, which I set out in the following Diagram 4.1.

These exclusionary indicators can be a long-standing part of a workplace culture. They can be perpetuated, or introduced, by support staff, other lawyers, or other professionals. There are serious adverse consequences for (most often) women where these factors are operating in a workplace. Those who are subject to these behaviours are treated unfairly, have fewer opportunities, are not seen as serious contenders, and have limited career prospects. When multiple factors are present, what I have termed ‘exclusionary overload’ occurs. Where solicitors experience a range of workplace inequities, they become marginalised, and may feel effectively forced out of their chosen profession.

I suggest the Exclusionary Indicators model can serve as a diagnostic tool for legal workplaces to examine various aspects of their culture and practice. Diagram 4.1 on the following page depicts the legal workplace Exclusionary Indicators I have identified and discussed in this thesis.
**LEGAL WORKPLACE EXCLUSIONARY INDICATORS**

1. **FOCUS ON PRACTITIONER AS THE PROBLEM**  
   [AS OPPOSED TO WORKPLACE POLICIES AND PRACTICES]

2. **HIGH ACHIEVER GOES FROM PLAUDITS TO CONDEMNATION**  
   [PRAISED AS BRIGHT, HARDWORKING, DEMONISED AS TROUBLEMAKER]

3. **LACK OF DUE PROCESS**  
   [NO POLICIES, AD HOC POLICIES, LACK OF TRANSPARENT CRITERIA]

4. **DISCRIMINATION & EXCLUSION UNEXPECTED**  
   [TAKEN BY SURPRISE, EXPECTED TO COMPETE ON EQUAL TERMS]

5. **INTERNAL/EXTERNAL REVIEW RESISTED**  
   [NO IN-HOUSE OR LAW SOCIETY GRIEVANCE POLICIES]

6. **CULTURE OF SECRECY**  
   [NO OPEN DISCUSSION, CLOAK OF ‘CONFIDENTIALITY’]

7. **THOSE WITH POWER ‘SPEAK WITH ONE VOICE’**  
   [‘THIS IS THE WAY WE’VE ALWAYS DONE IT’ – MALE VOICE]

8. **FUZZY THINKING ‘JUSTIFIES’ ACTIONS**  
   [‘CLIENTS PREFER MEN’; ‘MENTORING SEEN AS HARASSMENT’]

9. **PRIOR MARGINALISATION**  
   [EXCLUDED FROM NETWORKS & MEETINGS]

10. **IMPASSIONED RHETORIC**  
    [HARD TO REFUTE e.g. CLIENT SERVICE ETHIC]

11. **INFORMAL ATTEMPTS TO DISCREDIT**  
    [WHISPERING CAMPAIGNS, GOSSIP, BUTT OF JOKES]

12. **FIRM BOASTS LOFTY IDEALS OF JUSTICE**  
    [HARD TO BELIEVE/ACCEPT DISCRIMINATORY BEHAVIOIRS]

13. **FIGHT BACK AN UNEVEN MATCH**  
    [ARBITRARY DECISIONS, FEW COMPLAIN e.g. HICKIE’S CASE]

14. **IMPOSITION OF ROLES/TRAPS**  
    [OUTDATED, STEREOTYPICAL, LIMITING]

15. **SEXISM & SEXUAL HARASSMENT**  
    [BEHAVIOUR NORMALISED, EXPECTED TO ENJOY ‘JOKE’]

16. **LIMITED CAREER PATHS**  
    [NO FLEXIBILITY, PART-TIMER SEEN AS ‘SECOND-CLASS’ LAWYER]

17. **UNEQUAL DISTRIBUTION OF RESOURCES**  
    [WOMEN DO NOT HAVE SAME ACCESS]

18. **RESISTANCE TO CHANGE**  
    [REFUSAL/RELUCTANCE TO ‘UNLEARN’ PAST PRACTICES]
Exclusionary factors I have outlined are not always present. Some legal practices operate without the outmoded views (or ‘millstones’) that weigh women down and deny them equal access to, and enjoyment of, their profession. This underscores the fact there are other ways of working that accommodate and celebrate difference, encompass flexible and creative work schedules, and provide genuine career options that are appropriately recognised and remunerated.

In the final thesis Chapter, I will return to the ‘exclusionary effect’ that I have introduced here. In the following Section I summarise the key issues raised in this Chapter.

4.10 CONCLUSION
In this Chapter, I have highlighted ingrained differences in the ways women and men are perceived within private legal practice in Queensland. Women continue to be seen as ‘other’ than a traditional male norm. Women’s essential ‘otherness’ heightens their visibility, which in turn creates heightened performance pressures. The contrast between the dominant male homogenous culture and the interlopers can often serve to reinforce the dominant (male) cultural boundaries. The presence of ‘others’ makes the dominant group more aware of what they have in common, while at the same time posing a threat to that commonality. Hence, a woman described the hostility she encountered when she moved into an area of practice that had historically been an all-male preserve in her city.240 Women’s difference is reinforced by their obligations in the private sphere; the historically male traditions of legal practice; and, in some areas of practice, the male dominance of client groups.

Women continue to be viewed through stereotypical lenses, often ‘encapsulated’ in traps that caricature women in various outdated roles, such as madonnas, seductresses, pets, and iron maidens. My research demonstrates many men continue to be comfortable with women solicitors relegated to the first three roles, as these allow men to judge how they measure up as ‘women’. Women who operate in the

240 If51: 3 [woman – 50s – partner – regional]. Refer: Kanter, above n 3, 212; 221-222.
fourth role may be seen as lawyers, but may be isolated because they do not meet expected, and acceptable, standards of womanhood. The historical tracing of Kanter’s role traps developed in this Chapter provides a useful awareness-raising tool to emphasise that these ways of viewing professional women persist within private legal practice.

In order to achieve within their profession, some women continue to ‘sacrifice’ child rearing, family life and outside interests. Issues of workplace flexibility and alternative career paths will be canvassed in the following Chapter, but there is compelling evidence that having children will derail women’s careers. Solicitors who reported that their workplaces had policies to promote flexible and ‘family friendly’ ways of working were also likely to report policies were more style than substance.

Women complained that if they take time out for children they are discriminated against by the assumption that they are not interested in future promotion and in consequence they’re not given terribly good work. For these women the perceived daily discrimination they face is their treatment as an inferior sort of lawyer. Some women pass through their child rearing years still committed to their legal workplace and a full time legal career only to be then told age would go against [them] in terms of partnership. These attitudes and responses increase pressures on solicitors who seek to utilise flexible work practices, and have implications for opportunities to achieve success.

Women and men spoke positively about the potential for change, but it was evident that discriminatory attitudes and behaviours persist. Women were significantly more likely than men to report instances of discrimination, sexual harassment, and workplace exclusion and bullying. Less than 60 percent of women and of men reported their legal workplaces had anti-discrimination or sexual harassment policies. Less than 40 percent of women and 45 percent of men reported the existence of grievance procedures.

It was a common theme, regardless of policy availability, that solicitors were not

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241 All interview excerpts in this paragraph are typical of remarks made during the research, with these drawn from: I(f)37: 10 [woman – 40s – senior position – metropolitan].
willing to raise concerns publicly, and less likely to lodge formal complaints,\(^{242}\) for fear of losing their professional positions and reputations. ‘Women who complain are likely to be subjected to retaliatory action, which may mean not obtaining a job at all in the future’.\(^{243}\) A number of research participants suggested discriminatory behaviour was not ‘intentional’, or said no discrimination existed even though they may have just recounted incidents of unfair and unequal treatment they had experienced or witnessed.

Women were more likely than their male colleagues to report less favourable workplace treatment by administrative and support staff, by other lawyers, and by outside professionals. Less favourable treatment included: less respect and cooperation, poor response to queries or requests, and not made to feel welcome (by administrative staff); poor response to queries, not welcomed or included in social activities, and not consulted on workplace decisions (by other lawyers); and less respect and cooperation (by outside professionals). However, there were no significant differences reported by women and men in terms of how they were treated by clients.

My research highlighted reluctance by some men to interact professionally with their female colleagues, particularly for mentoring purposes, with some men suggesting that they were at risk of being accused of sexual harassment in a mentoring situation. Some men were reluctant to accept, or actively hostile to, the inclusion of women in a range of sporting activities associated with legal professional life. Where these activities are used for informal channels of communication and consultation, or client networking and marketing activities, women continue to be disadvantaged by omission.

Stories of exclusion and discrimination in the legal workplace echoed the literature on

\(^{242}\) My own experience (as an employee and a partner in private legal practice, and as a Regional Director with the Anti-Discrimination Commission Queensland, as well as through this doctoral research) reinforces what participants confirmed during the research: that women lawyers are aware of their rights, but are equally aware of a code of silence seen as necessary to preserve their jobs.

\(^{243}\) See: Thornton, above n 68, 259. Women in my research were convinced that any formal complaint would only serve to make their employment or advancement prospects bleaker.
workplace mobbing. The Chapter drew on this material to develop a framework for
the ‘exclusionary effects’ women in particular experience as a result of these
behaviours across the legal profession. The Chapter then brings together material
from the Kanterian role trap analysis, the mobbing-style exclusionary practices, and
other discriminatory behaviours identified by my research. These factors are overlaid
on an entrenched and traditional culture. These then build into a model of
‘Exclusionary Indicators’ in legal workplaces. When a number of factors are present
or begin to accumulate within a legal workplace, I suggest lawyers within those
workplaces may experience ‘exclusionary overload’. Those who experience overload
may ultimately choose to leave the profession, or feel forced to do so.

I argue that the ‘exclusionary effect’ is extant within the solicitors’ branch of the
Queensland legal profession. Exclusionary indicators need to be recognised, and
addressed, by the profession as a whole and by individual legal workplaces. I argue
that until that is done, women will continue to receive less rewarding work; be
excluded from a range of informal networking, mentoring and social opportunities; be
denied access to senior roles both within their firms and within the wider profession;
be regarded as lesser lawyers; and their considerable skills and talents will be lost.

Lawyers generally accept that one aspect of professionalism is about how we should
behave even if there are no legal sanctions.244 It is also understood that law firms are
business entities with the concomitant need to attract and retain the best people for the
job within an environment that is safe and healthy for all. In such circumstances best
practice human resource management demands, at the very least, a clear framework of
up to date policies and transparent and workable grievance procedures. I argue that
solicitors must seriously review how they think about this aspect of the practice of
their profession. They must question how, and why, it is that many of their own
members express dissatisfaction with being trapped in roles that are no longer
remotely appropriate (if they ever were) for professionals that aspire to be seen as
protectors of community rights and arbiters of community standards. While the
rhetoric continues to fall short of reality, more and more women will continue to leave

244 Corbin, Lillian, ‘Professionalism Redefined – more than ethics’ (2001) 28 (2) Alternative Law
Journal 141.
the private profession and the profession will continue to fail to understand why that is so.

It is within this context that women and men are still reporting a reluctance to step up to a mainstream and visible debate about issues around balancing work with other life activities, about family needs generally and about child care in particular. There are strong signs that more and more men are articulating hopes and aspirations around a balance between work and family and a commitment to be more involved with their children. It is to this very vexed question of work life balance that I turn in the next Chapter.
CHAPTER 5. IS FLEXIBILITY POSSIBLE? IN A WORD, ‘NO’

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Because they are asked to conform to a career model based on a male life cycle (and assuming the presence of a spouse who undertakes primary responsibility for managing domestic affairs), women are confronted with impossible choices’.
> Hull & Nelson, 1998

Q: Do you see ways we can make the practice of law more accessible to men and women with young children, practitioners who perhaps don’t want to work those sort of grinding hours? Is it possible for strategies that work in other business areas, like flexible work practices and job sharing, is that possible within our profession?
A: The answer in one word is ‘No’.
> man – 50s – senior solicitor – metropolitan

5.1 INTRODUCTION
This Chapter of the thesis addresses specific issues around the second key area explored in my doctoral research, that of workplace flexibility. The Chapter examines the findings of the Queensland-wide survey in relation to the existence of, access to, and utilisation of, workplace policies for a range of flexible leave situations. It draws on rich interview data about how women and men view their lived experiences as Queensland solicitors and how responsive their legal workplaces are to the exigencies of modern life.

The Chapter highlights the very real practical difficulties that female and male practitioners experience in ‘balancing’ their work and life commitments and responsibilities. In particular, it questions whether practitioners can ‘have it all’ as they strive not just for professional success, but also for healthy lifestyles that allow them to privilege family, friends, and outside activities.

The Chapter considers the ‘culture of long hours’ that many identify as a cornerstone of private legal practice as a solicitor and which can create an effective barrier to flexibility. It explores the belief that the culture is client driven and therefore beyond the power of individual practitioners or firms to challenge. The Chapter suggests this is primarily because an unquestioning commitment to client service is viewed as a hallmark of the true professional, and argues this is a self-perpetuating discourse, insidious in its ability to curtail

2 I(m)79: 15 (interview conducted in 2005).
other ideas or approaches. The Chapter canvasses the requirement to work overtime, and the health and stress implications of long hours and high-pressure work. It explores the intensity of legal lives, and the various coping mechanisms that solicitors may employ to manage day to day pressures.

The Chapter also considers the terminology used and the types of policies and practices on offer in the broader flexibility debate. It looks at what ‘balance’ means to different practitioners, and the fact that, for some, ‘flexible’ practices can be quite inimical to any privileging of private life. The Chapter explores the fact that some solicitors operate in firms that offer no workplace flexibility policies; or, find themselves in workplaces where policies are little more than a sham, and where attempts to utilise them are subtly or overtly discouraged.

In this Chapter I argue flexibility is no longer a women’s issue with limited applicability, rather it is a basic human resource management issue affecting all practitioners in the modern legal workplace. The flexibility debate has often stalled at the hurdle of precedent (‘this is the way we’ve always done it’) and a much broader and more inclusive debate is needed across the Queensland profession. The Chapter asks whether there are alternate ways of ‘doing’ law, and of ‘being’ lawyers that may actually enhance the practice of law while better supporting and protecting its practitioners.

In the following Section, I look at the ongoing need for many women (and some men) to sacrifice children and family to avoid being sidelined in the partnership stakes, and ask whether it is possible for women in particular to enjoy both legal practice success and parenthood. Where there is a willingness to sacrifice family (so as to more closely resemble Margaret Thornton’s ‘benchmark man’3), this can reinforce the traditional structures and mores of the profession. But, are the traditional structures of the profession so rigidly entrenched in some areas as to demand sacrifice as the price of entry. It is something of a Catch-22 to try to fathom ‘what comes first?’ Is it the sacrifices many lawyers make to enable them to operate as solicitors within Queensland’s private legal profession; or, is it the structure of the profession, the system itself, that requires a certain kind of commitment, a certain kind of lawyer to have a chance of success within it?

5.2 WHAT COMES FIRST?

In 1994 Mary Jane Mossman took up a question that had been asked more than one hundred years earlier: ‘Is it practicable for a woman to successfully fulfil the duties of wife, mother and lawyer at the same time?’ Or, as a senior Queensland solicitor in my research pondered: Must women’s full professional participation always mean a supreme sacrifice? Mossman posited that the question had become particularly significant for the increasing number of women entering the profession.

Mossman also posed some important questions of her own: ‘is the nature of the work fixed and immutable, so that lawyers must adapt to it or exit from the profession?’ And: ‘are we willing to examine the current arrangements for legal work with a view to adapting the work, where possible, to accommodate the needs and interests of lawyers?’ She suggested her questions required examination of the ‘hidden’ assumptions about legal work, and this necessitates understanding the interests that are served by the current arrangements of legal work and legal employment.

Legal work can create time demands that are open-ended, hence leading to an ongoing demand for extended professional hours. These structural issues are critical when we consider that men usually enjoy a privilege at home in terms of fewer obligations for child care, domestic chores, and general family responsibilities. This translates to a positive resource at the office. Men can ‘expand hours spontaneously, flexibly, and informally … [they are] able to put work first’. Male solicitors openly acknowledged this reality.

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5 [man – 50s – senior partner – national firm]. See: Chapter 4, Section 4.3 Keeping Their Heads Down, p 4-8, at p 4-12 n 42.
6 Ibid. These questions draw on work by Jack, Rand and Jack, Dana Crowley, ‘Women Lawyers: Archetype and Alternatives’ in Gilligan, Carol, Ward, Janie Victoria and Taylor, Jill McLean (eds), Mapping the Moral Domain – A Contribution of Women’s Thinking to Psychological Theory and Education (1988) 263.
9 Seron and Ferris, above n 4, 63.
10 Ibid. These questions draw on work by Jack, Rand and Jack, Dana Crowley, ‘Women Lawyers: Archetype and Alternatives’ in Gilligan, Carol, Ward, Janie Victoria and Taylor, Jill McLean (eds), Mapping the Moral Domain – A Contribution of Women’s Thinking to Psychological Theory and Education (1988) 263.
One senior practitioner said that he could not have achieved his level of success without his wife’s efforts and support on the home front. And discussing the hiring practices in legal firms, another male solicitor offered this insight—

_They employ a male knowing he’s married. He’s got a wife who can look after [the domestic side], and he can be solely focused on his work. And if we need him to stay back till 8, 9, 10 o’clock at night, well then he can do that._

[male – 30s – employed solicitor – metropolitan]  

One female interviewee recounted how she had been repeatedly passed over for partnership in her previous firm, as male partners had openly expressed concerns that she would inevitably have children and leave the firm, reinforcing the aphorism that ‘biology is often read as destiny’. She also recalled that another woman in that firm eventually was offered a partnership. This second woman was unable to have children. Life events had effectively forced the _supreme sacrifice_ on her, and thus rendered her more ‘acceptable’ to the firm. She took on Sandra Berns’ ‘genderless persona’. She was less different, less ‘other’ and, as a childless female lawyer, more like the insider males with whom she eventually entered into partnership.

Others have children, but still make enormous sacrifices to remain on the fast track to partnership. A senior corporate and commercial woman tried alternative ways of working, but a male colleague observed the impossibility of her providing the necessary service to the client on any part-time basis. The woman hired some domestic staff, and _her husband gave up work_ because she wanted _to be in this desperately – she wanted to give that service to the clients_. Describing her as _super_, her male colleague said this woman knew:

_This is not a 40 hour [a week] day job. It’s got to be a 60 hour a week job ..._

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12 I(m)36. See also: Chapter 6, Section 6.2 A Contested Notion, p 6-3, at p 6-7 n 27.  
13 I(m)30: 23.  
15 See above n 5.  
16 Berns, above n 14, 41.  
17 I(f)34: 21. The woman who made partner remained, after some years, the only female partner in the firm.  
18 There was one story of a woman who barely saw her small child because of her long working hours. This was not isolated: I(f)73: 4-5 [woman – metropolitan: relating story of young female colleague].  
19 I(m)78: 17 [man – metropolitan: describing senior female colleague].
Another woman, a senior associate, had tried to combine her legal career and family, opting for a part-time work regime while her baby was very young. She related how when her spouse was away, she was the sole caregiver, making it imperative for her to reach the childcare centre before it closed. She described feeling: *incredibly stressed, in the sense of not knowing how I was going to get the work done. My primary responsibility had to be for the child, but I had this enormous guilt that I wasn’t meeting expectations work wise.* 20 She said her supervising partners (male) regularly queried what would happen on her files on the days she did not work. They went even further –

> I’ve had some really crazy suggestions from them: like putting a seven-month-old baby in front of the t.v. So I just feel there’s a real lack of appreciation for some of my non-work challenges.

[woman – early 30s – senior associate – metropolitan] 21

A female principal believed women were not achieving partnership, despite their rapidly growing numbers at the lower levels of the private profession, because *you get to be a partner because you’re prepared to sacrifice everything, including your family, to the partnership.* 22 One woman principal in a large regional city appeared to effortlessly combine her large and thriving legal practice with extensive community involvement and a busy family life. But, she made very clear and deliberate choices to delay, or sacrifice, early child rearing to focus on building her business, and she attained partnership before her children were born. 23 She described the flexible arrangements she could now enjoy to privilege children and family life, and nominated the resultant *family balance* as integral to her personal success mix. 24 When she mused on what career or life advice she would pass on to younger women, she was conscious of the irony: *I would not recommend [delaying children] because having children as an older person is very physically draining. With a daughter I would be recommending: Have them young ... if you can at all arrange it.* 25

Although some women do delay child bearing to concentrate on and build a career, the decision makers within their firms can still view them through a gendered lens that continues to see them as not suitable for partnership, as likely to have children and leave the firm, as not

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20 I(f)46: 19.
21 I(f)46: 14 (emphases hers).
22 I(f)39: 8 [woman – 50s – principal - regional].
23 I(f)52: 5-6 [woman – 50s – principal – regional].
24 I(f)52: 2-3
25 I(f)52: 6.
‘serious’ about a legal career. While these women do make a deliberate sacrifice, it is effectively wasted in career progression terms. One interviewee also suggested some women deferred having children because they saw the impossibility of combining career and family, and so they focussed initially on work in order to have some financial security behind them when child bearing ‘ended’ (my terminology) their career. Whether this has elements of a deliberate choice, or whether it is driven by an inevitability of the legal profession’s response to efforts to combine parenthood and career, is not always clear.

One woman in a metropolitan firm had small preschool children and she said she had sacrificed her career to some extent by choosing not to work the long hours that were the firm norm. She saw real future possibilities in job sharing and other flexible arrangements and was keen to see those ideas promoted and discussed within the Queensland profession. As a senior associate in a national firm, she was working with large corporate clients in banking and finance. Her firm would describe her as a part-time success story, but her reality was somewhat different: “Technically” I work four days a week, which I don’t. I always work five. I always end up doing extra work." This solicitor consulted her in-house human resources manager, who readily agreed she was doing 30 percent beyond her official or standard hours. The practitioner expressed great frustration that nothing was done to assist her, and the role of management is one to which I will return later in the Chapter.

Another capital city senior associate saw huge difficulties for families in the unpredictability of the professional demands as much as in their extent. She described the hours as erratic, as well as long, and described an incident where she was called back from holidays when pregnant: pick the seven-month pregnant woman with a toddler. She’s the one it will least inconvenience [laughs]. This practitioner had only ever worked for large or national firms. She said that if a solicitor took time out for any reason, others would get ahead in the career stakes because: If you move out of that very stratified career progression structure then you “fall behind” and people are aware of that. She reflected on the continuing drain of highly capable and competent women from private legal practice, and noted of the women she knew: very few of the ones with children have remained within the traditional law firm structure. In

26 If(t)55.
27 If(t)50: 11-12, 23 [woman – 40s – senior associate – metropolitan ]. She was also still required to meet firm expectations for attendance at client functions (outside ‘standard’ working hours).
28 If(t)44: 21 [woman – 30s – senior associate – metropolitan] (emphasis hers).
29 If(t)44: 1-2.
fact, I’m one of the last of my group. They’ve either moved into businesses as in-house lawyers, or out completely.\textsuperscript{30}

Many of the women who remain within their chosen profession are making huge sacrifices of time, of career advancement, or of parenthood, and in terms of their health and wellbeing. Obviously not all women saw their situations in wholly negative terms, just as all men did not think their work-life balance was as it should be.\textsuperscript{31} A few practitioners did report, through the survey or interview, satisfaction with the flexibility offered in their firms. But most of the research participants did not. Many spoke with envy of the conditions offered in government legal departments. A practitioner (and a parent of three small children) who was struggling to achieve workplace support to actually implement the part-time work arrangements she had previously negotiated with her employer, said this –

\begin{quote}
I’ve got two friends who work for government departments. You have flexitime. So if you’re working the hours that we work [in private practice], you effectively get two days off a month [laughs]. And if I ask for a day off a month, it’s, “Why are you asking for a day off?” A friend of mine left [the firm] [a few] months ago. She’s thinking of having children and that’s why she left.
\end{quote}

[woman – 40s – senior associate – international firm]\textsuperscript{32}

Many women, and some men, spoke in terms of sacrifice, juggling, or balancing competing demands, and often gave a sense that exhaustion was never far away –

\begin{quote}
Looking back, it’s just a haze, because I worked continually. I had children. I was in partnership. I see a lot of the younger women now saying, “How did you do it?” and I really just don’t know.
\end{quote}

[woman – 50s – former partner, now consultant – regional]\textsuperscript{33}

\textsuperscript{31} One Brisbane solicitor wrote to the editor of the Queensland Law Society magazine, Proctor, lauding the arrangements in her workplace (Knowlman, Jackie, ‘Some get it right’ (letter to editor), (June 1999) Queensland Law Society Proctor 4). She was responding to media coverage of a recently released report (commissioned by the Victorian Women Lawyers Association: Victorian Women Lawyers Association (Trifiletti, Gabby), Taking up the challenge – women in the legal profession (1999)) that described a profession that was ‘inflexible and insensitive to the private lives of solicitors forcing many to leave private practice’. The letter writer described her own experiences of partnership, pregnancy and part-time work in glowing terms, stating she was aware her firm was ‘progressive’, but that she was also aware of ‘similar stories of other firms around town’. The Brisbane solicitor queried whether the Victorian report was flawed, or whether only some Queensland firms had ‘taken up the challenge’ of accommodating women and their family responsibilities within the mainstream of the profession. Perhaps part of the answer to her question lies in the fact that such letters have not been a common feature of the letters column in Proctor.
\textsuperscript{32} I(f)50: 10-11 (emphasis hers).
\textsuperscript{33} I(f)55: 2-3, 4-5.

It may be there is more of a supportive atmosphere for lawyer-parents in regional centres – see: Chapter 3 where survey data showed solicitors who had children were more likely to be in regional areas, esp p 3-7ff, and Graph 3.2: Presence of children by sex and location of firm, at p 3-8.
Practitioners generally reported having paid a high price for the stress and pressures of private practice as a solicitor, and in the next Section I examine this in more detail.

5.3 THE PRICE IS STRESS

Some solicitors described their legal world as pressures extremely high and time to relax non-existent. Some struggled with a workplace reality that ensured family commitments were always a lower priority than client expectations making it extremely stressful. Others simply conceded they don’t cope all that well. More than half of the practitioners surveyed, women and men, reported they found their work physically exhausting, intellectually taxing, emotionally draining, and/or psychologically stressful, and they saw it as consuming most of their life.

These findings are set out in the following Table 5.1. The percentage figures in the Table represent the percentage of the total number of all survey participants (whether they answered this part of the survey or not), who gave a ‘yes’ response to the various possible effects of work pressure posed in the question. Both women and men reported similar effects of work pressures. The single statistically significant difference between women and men in their responses to practice pressures and demands was their perception of the psychological stressfulness of their legal work (highlighted in bold in the Table). Women who participated in the survey were far more likely (84.62 percent) than their male counterparts (68.13 percent) to report they found their work psychologically stressful.

34 F65(S) at Q17 What do you do to cope with work pressures? [woman – 20s – employed solicitor – no children].
35 F102 (S) at Q12 If you answered no to availability of flexible leave; or, yes, but you don’t feel … able to utilise …? [woman – 40s – resigned as solicitor to go to Bar – two children].
36 M36(S) at Q17 What do you do to cope with work pressures? [man – 40s – partner – no children].
37 Mann Whitney (MW)-U=3952.00  Z=-2.719  p=0.007. What is not clear from the Q15 findings is whether men, for a range of reasons, are simply less likely than women to report stress. There was still a strong response rate from male practitioners, with more than two-thirds reporting they did find their work psychologically stressful. The findings (for both women and men) are a cogent argument for further Queensland research in the area of work-related stress.
Table 5.1: Q15 - Effects of work pressure

<table>
<thead>
<tr>
<th>Q15 work pressure – yes</th>
<th>FEMALES</th>
<th>MALES</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Physically exhausting</td>
<td>59</td>
<td>59.00</td>
<td>48</td>
</tr>
<tr>
<td>Intellectually taxing</td>
<td>88</td>
<td>84.62</td>
<td>69</td>
</tr>
<tr>
<td>Emotionally draining</td>
<td>85</td>
<td>79.44</td>
<td>65</td>
</tr>
<tr>
<td>Psychologically stressful</td>
<td>88</td>
<td>84.62</td>
<td>62</td>
</tr>
<tr>
<td>Work consumes most of life</td>
<td>70</td>
<td>64.81</td>
<td>57</td>
</tr>
</tbody>
</table>

The effects of work pressure set out in Table 5.1 were interrogated against the full range of demographic factors canvassed in the survey.38 Broadly, the findings were unaffected by age, firm size, geographic location, position within a legal firm, individual background (parents, schooling, prior career, additional study), or whether or not a solicitor had children, although there were some exceptions. The full details are set out in Appendix 9.

Interview excerpts graphically illustrate the stress and pressure some female practitioners operate under as they try to negotiate the demands of their work and other lives. This is particularly so where young children are part of the work and family mix. However, work stress cannot be dismissed as a ‘women’s issue’, as very high proportions of both women and men reported being affected by stress and pressure. During an interview, one man raised this as a key issue of importance and referred to recent research in the United States that found high levels of depression among lawyers.39 He saw stressors both within, and outside, legal practice because: *We’ve got clients whose needs are increasingly more complex and difficult. And I don’t think things are improving in terms of the public’s perception of the profession.*40

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38 Survey Q2 (age), Q3 (number of lawyers - workplace size), Q4 (postcode – split as to metropolitan or regional), Q5 (position in firm e.g. partner or employee; years admitted/seniority), Q6 (background: whether professional parent, private schooling, a prior career, or undertaking current studies), Q7 (children).
40 l(m)72: 15-16 [man – 40s – principal – metropolitan].
Women and men raised concerns about unrealistic client expectations in the context of work stress,\textsuperscript{41} although some acknowledged the profession’s role in the problem –

\textit{It’s by no means a nine to five job. Clients will ring you on the weekends. I think part of the problem is we’ve actually trained our clients to have unrealistic expectations. We’re always saying stupid things like, “We’re available 24 hours a day ...”}.  
[woman – 30s – employee – specialist litigator – metropolitan]\textsuperscript{42}

She saw the effects of workplace stress as a key issue for the Law Society to address, and she also conveyed the sense of concern and urgency many practitioners experienced when she expressed the view that \textit{a lot of law claims [from aggrieved clients] arise out of people being so overwhelmed with work and financial pressures, they are just letting things slip.} She likened the profession to a \textit{juggernaut} that \textit{cannot be deflected}.\textsuperscript{43} This practitioner effectively summed up many of the concerns expressed during interviews by describing her work world this way –

\textit{It’s really not a fun environment. It’s hard work. It’s intellectually draining. It’s physically draining sometimes. It’s emotionally draining. You’re dealing with many different types of people. The time pressures are constant. You often find that, in your private time, you’re just so exhausted you don’t have the necessary energy or inclination to do other things. And it’s very, very unforgiving in terms of a family.}

Solicitors spoke of the \textit{relentless} nature of the work and the attendant client expectations, with one suggesting the firm was effectively run by clients, rather than by the partners.\textsuperscript{44} The idea of workplace intensity in a wider societal context was a key theme, as this partner reflected –

\textit{I work now to a greater level of intensity and speed ... intensity in every sense, than I did when I started in the law. And I would hate to imagine that any of my children might be in not only this profession, but in any other, in 20 years time working at this level of intensity ... I fear for humanity if ...}  
[man – 40s – commercial partner – city]\textsuperscript{45}

Solicitors are not coping well inside traditional legal workplace structures. Men (10.42 percent) were significantly more likely than women (2.73 percent)\textsuperscript{46} to report that undue work pressure was ‘not an issue’. However, the overwhelming majority of women and men within

\begin{itemize}
  \item \textsuperscript{41} Refer: Chapter 4, Section 4.7 Inside Legal Workplaces, 4-37, esp \textbf{Table 4.7.4: Q10(4) – Perceived workplace treatment by clients}, at p 4-47.
  \item \textsuperscript{42} I(f)76: 14-15, 19.
  \item \textsuperscript{43} I(f)76.
  \item \textsuperscript{44} I(f)46: 13, 15-17 [woman – 30s – senior associate – specialist area – metropolitan].
  \item \textsuperscript{45} I(m)36: 14-15 (emphasis his); also: I(m)35: 4 [man – 30s – commercial litigator – metropolitan]; I(f)38: 21 [woman – 50s – senior litigator – metropolitan].
  \item \textsuperscript{46} MW-U=4046.00 Z=-3.309  p=0.001.
\end{itemize}
the solicitors’ branch of the profession were clearly reporting problems in negotiating and managing their legal lives. In the next Section I consider some ways in which they do try to manage work pressures and stressors.

### 5.4 Survival Strategies

The coping strategies utilised by members of the profession were as varied as the individuals within it, as the following Table 5.2 illustrates. But ‘quality family time’ was the most utilised coping strategy for both women and men.\(^{47}\)

<table>
<thead>
<tr>
<th>Q17 Coping strategies</th>
<th>FEMALES</th>
<th></th>
<th>MALES</th>
<th></th>
<th>TOTAL</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Quality time family</td>
<td>56</td>
<td>50.91</td>
<td>43</td>
<td>44.79</td>
<td>99</td>
<td>48.06</td>
</tr>
<tr>
<td>Walk/jog/run</td>
<td>48</td>
<td>43.64</td>
<td>35</td>
<td>36.46</td>
<td>83</td>
<td>40.29</td>
</tr>
<tr>
<td>Spend time friends</td>
<td>48</td>
<td>43.64</td>
<td>34</td>
<td>35.42</td>
<td>82</td>
<td>39.81</td>
</tr>
<tr>
<td>Do nothing at home</td>
<td>36</td>
<td>32.73</td>
<td>26</td>
<td>27.08</td>
<td>62</td>
<td>30.10</td>
</tr>
<tr>
<td>Sport</td>
<td>25</td>
<td>22.73</td>
<td>36</td>
<td>37.50</td>
<td>61</td>
<td>29.61</td>
</tr>
<tr>
<td>Alcohol/prescription drugs</td>
<td>29</td>
<td>26.36</td>
<td>29</td>
<td>30.21</td>
<td>58</td>
<td>28.16</td>
</tr>
<tr>
<td>Healthy diet</td>
<td>33</td>
<td>30.00</td>
<td>16</td>
<td>16.67</td>
<td>49</td>
<td>23.79</td>
</tr>
<tr>
<td>Sleep a lot</td>
<td>30</td>
<td>27.27</td>
<td>10</td>
<td>10.42</td>
<td>40</td>
<td>19.42</td>
</tr>
<tr>
<td>Meditate</td>
<td>9</td>
<td>8.18</td>
<td>5</td>
<td>5.21</td>
<td>14</td>
<td>6.80</td>
</tr>
<tr>
<td>Illegal drugs</td>
<td>1</td>
<td>0.91</td>
<td>0</td>
<td>0.00</td>
<td>1</td>
<td>0.49</td>
</tr>
<tr>
<td>Some other strategy</td>
<td>15</td>
<td>13.64</td>
<td>14</td>
<td>14.58</td>
<td>29</td>
<td>14.08</td>
</tr>
</tbody>
</table>

In a profession not noted for its work-life balance, the data in Table 5.2 demonstrate the potential stresses placed on family life, and other relationships and activities, when close to 30 percent of the profession report using alcohol and/or prescription drugs as a ‘coping strategy’ (with slightly more men than women identifying this strategy). A number of solicitors identified a culture of alcohol use and abuse, where *being rotten drunk and forgetting your socks and having to borrow socks to go to court is always taken as a bit of a joke* or the expected culture. There were references to a heavy *focus on alcohol as a means of relaxation*. The use of alcohol within the profession was underlined by those individuals who

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\(^{47}\) The significance of family time is revisited in Chapter 6 when I examine the key elements identified by solicitors as part of their success mix.
admitted anonymously they drank *excessively*, more so *during stressful times.*

In terms of the statistically significant differences highlighted in bold in the Table, women were significantly more likely than men to report using healthy dietary habits to combat stress; and were also much more likely than their male colleagues to nominate sleep as a strategy. The data also show men were significantly more likely to utilise sport as a coping strategy. Time for sport no doubt depends on having sufficient free time after attending to any domestic responsibilities. This is borne out by the fact that women were far more likely to select sport if they had no children than were their female colleagues who were parents.

In the survey, solicitors were also invited to nominate any other specific coping strategies that they utilised to manage work pressures, beyond those listed on the survey instrument. Practitioners took the opportunity to nominate their particular or preferred coping mechanisms and the final list included wide ranging activities, some of which add other concerns for those practitioners struggling to manage their working lives. What might be broadly termed ‘positive’ activities included: farming, gardening, reading, gym, swimming, horse riding, yoga, music, domestic chores and children, travel, and socialising. More ‘negative’ approaches, or approaches that raise more concerns and questions, encompassed: taking frustration out on/complaining to family, discussing with partner, professional therapy/counsellor, eating, screaming, ignoring it, keep doing job, working overtime/harder, and praying. Some practitioners nominated both positive and negative strategies, with one solicitor saying they needed *all of the above.* The survey responses serve to illustrate the need for further research and exploration into how practitioners are managing their lives and what strategies and approaches the profession might offer to better support and retain solicitors.

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48 If(f)43:20 [woman – 30s – sole principal – regional]; F31(S) at Q17 What do you do to cope with work pressures? [woman – 20s – employed solicitor – metropolitan]; F55(S) at Q17 What do you do to cope with work pressures? [woman - 30s – employed solicitor – metropolitan].

49 MW-U=4576.00 Z=-2.237 p=0.025.

50 MW-U=4390.00 Z=-3.044 p=0.002.

51 MW-U=4500.00 Z=-2.311 p=0.021.

52 $\chi^2$=4.741 df=1 p=0.029. For details of this and other differences arising out of demographic data see: Appendix 10.

53 I acknowledge the dangers of classifying coping as somehow inherently ‘good’ or ‘bad’. There are no such clear divisions. Some apparently positive strategies may be tied up with excessive alcohol use, some sporting or outdoor activities may serve to remove and isolate practitioners from family and friends. It may be very positive for an individual to ‘complain’ to their family about the pressures they are under, or to use prayer as a stress management tool. Comments made during interviews added depth to survey data, and led me to list some strategies as negative, in the sense that practitioners were feeling very negative about their circumstances and their response/s to them.
Many, if not most, solicitors readily agreed during the confidential interviews that the stress levels in their profession were extraordinary and sometimes impossible to manage. Solicitors reported via anonymous survey instruments that they were not coping with their daily work pressures. Nevertheless, in similar terms to those solicitors who discussed incidences of workplace discrimination and harassment, practitioners were quick to agree that as individuals, or as a profession, they were not likely to publicly admit to a problem, let alone to seek help.\textsuperscript{54} Far from being able to seek assistance, some practitioners spoke of an unforgiving culture that does not permit error – \textit{expectations of everybody being perfect}.

This section of the survey also interrogated participants about why they did not utilise coping strategies or techniques, either more frequently, or at all. A large number of solicitors indicated that they would like to employ some specific coping strategies; or, would like to utilise some coping strategies on a more regular basis. They were unable to do this because of other imperatives in their domestic lives, or simply because their legal work proved all-consuming. Some practitioners indicated more than one barrier to engaging in strategies to manage pressures. The following Table 5.3 sets out the findings, and shows, out of all survey participants, the numbers and percentages of women and men who nominated specific barriers.

\textbf{Table 5.3: Q17 – Inability to use coping strategies}

<table>
<thead>
<tr>
<th>Q17 Inability to use coping strategies Because of -</th>
<th>FEMALES</th>
<th>MALES</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Need to do household/domestic chores</td>
<td>45</td>
<td>40.91</td>
<td>24</td>
</tr>
<tr>
<td>Need to care for children</td>
<td>20</td>
<td>18.18</td>
<td>15</td>
</tr>
<tr>
<td>Need to care for/assist other family members</td>
<td>10</td>
<td>9.09</td>
<td>6</td>
</tr>
<tr>
<td>No time after work to spend time on self</td>
<td>55</td>
<td>50.00</td>
<td>30</td>
</tr>
</tbody>
</table>

In two instances, highlighted in bold in the Table, women were significantly more likely than their male colleagues to report being unable to use coping strategies.\textsuperscript{56} Half of Queensland’s

\textsuperscript{54} Particularly: I(f)55: 13-14 [woman – 50s – consultant – regional].

\textsuperscript{55} I(f)38: 10 [woman – 50s – senior litigator – metropolitan].

\textsuperscript{56} household/domestic chores: MW-U=4440.00 Z=-2.408 p=0.016; no time after work: MW-U=4290.00 Z=-2.720 p=0.007
women solicitors were reporting they had no time for themselves after their professional work was done.57

The key differences between women and men’s access to, and usage of, a range of lifestyle choices and activities to achieve balance are demonstrated in the following Graph 5.1. The bars depict three groupings among both the women and the men survey participants. The lower (blue) bar represents those women and men who reported they had ‘no issue’ with coping as they did not experience undue work pressure. Men were significantly more likely than women to fall into this group, although the numbers for both women and men were small. The middle (red) bar represents those women and men who reported they did use coping strategies, with men more likely to be in this group. The top bar (yellow) represents those women and men who would like to do something, or something more, and it is the time-poor women who are much more likely to fall into this category.58

Graph 5.1: Q17 – Women and men differences in managing pressures

The specific coping strategies canvassed in survey Question 17 and discussed thus far can be

57 There were some demographic factors, other than sex, operating in the nomination of barriers to utilisation of coping strategies. These are set out in Appendix 10.

58 Graph 5.1 is based on the following figures: pressure not an issue Female: N=3, 2.73%; Male: N=10, 10.42%; use coping strategies Female: N=33, 30.00%; Male: N=42, 43.75%; would like to do more Female: N=74, 67.27%; Male: N=44, 45.83%. (Kruskall Wallis (KW) χ²=10.948 df=1 p=0.001).
viewed as whole of life strategies, or techniques for managing stress generally in daily life. I also want to highlight the coping responses solicitors reported utilising at work when faced with some emergency or crisis in the domestic sphere, and I turn to this in the following Section.

5.5 CRISIS RESPONSES

I will examine in detail the availability of a range of workplace leave policies later in the Chapter. At this juncture I turn to what practitioners actually did at work in the event of some personal crisis or family emergency arising. This is in a context where participants had either reported that there were no flexible hours or emergency leave policies in their legal firms; or, in circumstances where they indicated there may have been formal policies but they personally felt unable to access or utilise them.

Table 5.4 (on the following page) records the numbers and percentages of all the survey participants who indicated which of various options they relied upon to survive a crisis. The statistically significant differences between women and men respondents are highlighted in bold in the Table. The figures show that it is predominantly women who are required to somehow ‘manage’ the emergency.

Table 5.4 illustrates the significance for some men of having the benefit of a spouse or partner who can step in and deal with the problem, leaving men free to focus on work obligations. Women are more likely to ask their spouse or partner to assist, presumably because women feel less able to negotiate time away in their own workplaces. My research suggests possible reasons would include the fact that women are more likely to be more junior practitioners, and/or are more likely to lack confidence about asking for, or taking, time out from the workplace.

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59 See: Section 5.9 Rhetoric and Reality, at p 5-36 ff.
60 Take time ‘disguised’: MW-U=4876.00 Z=-1.986 p=0.047; Keep working and worry: MW-U=4684.00 Z=-2.665 p=0.008; Spouse/partner takes time from their work: MW-U=4780.00 Z=-2.337 p=0.019
Table 5.4: Q12 - Domestic emergency/crisis response at work

<table>
<thead>
<tr>
<th>Q12 crisis response</th>
<th>FEMALE</th>
<th>MALE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Take time anyway (and worry about office reaction)</td>
<td>32</td>
<td>29.09</td>
<td>19</td>
</tr>
<tr>
<td>Take time ‘disguised’ as legitimate leave (sick, holiday)</td>
<td>13</td>
<td>11.82</td>
<td>4</td>
</tr>
<tr>
<td>Just keep working (and worry about the crisis)</td>
<td>17</td>
<td>15.45</td>
<td>4</td>
</tr>
<tr>
<td>Call on family members/friends to fill the gap</td>
<td>17</td>
<td>15.45</td>
<td>7</td>
</tr>
<tr>
<td>Spouse/partner on home front takes over</td>
<td>6</td>
<td>5.45</td>
<td>10</td>
</tr>
<tr>
<td>Spouse/partner takes time from their work</td>
<td>15</td>
<td>13.64</td>
<td>4</td>
</tr>
</tbody>
</table>

The male ‘advantage’ in a domestic crisis situation was also reinforced by other survey responses when participants were asked whether or not the question of flexible hours or emergency leave was even an issue for them. One quarter of male respondents (significantly more than 11.82 percent of women)\(^{61}\) reported this was not an issue, as summarised in Table 5.5 below –

Table 5.5: Q12 - Flexible/emergency leave not an issue

<table>
<thead>
<tr>
<th>Q12 crisis response</th>
<th>FEMALE</th>
<th>MALE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Flexible/emergency leave not an issue</td>
<td>13</td>
<td>11.82</td>
<td>24</td>
</tr>
</tbody>
</table>

Even where research participants accepted the legitimacy, or inevitability, of long hours, they were almost universal in their acknowledgement that a commitment to the hours carried with it a loss, or sacrifice, in some other area of their lives – most often, although not always, in terms of family involvement. For some too, that loss came whether they were physically in the office or at home. One participant described a partner at her firm who nominally worked three days a week –

*She does do a lot of work from home, late at night, weekends, etc. So although it does work for her [in terms of her career], when she’s at home it’s not free time.*

\(^{61}\) MW-U=4584.00  Z=-2.453  p=0.014.
It’s continued work. And it obviously cuts away from the amount of time you’re choosing to spend with your children as well. [woman – regional: describing experience of part time partner]

One journal article, canvassing work-life balance and the ability of women and men to move to top management, posed the question, ‘What would you sacrifice?’ The implicit message is it will be necessary to sacrifice something. The authors found, just as in many legal practices, that ‘extensive availability remains a sign of distinction … Putting in long hours is more than ever a means for being detected and selected from among people with very similar (excellent) profiles …’ The study concluded that women with children who were claiming to have found a balance, a work-life reconciliation, continue to be side tracked (my phrase) to areas which are recognised as ‘female’ and which carry less opportunities for career advancement. Indeed, Margaret Thornton argues that flexibility can be used to erode working conditions, and that part time work for women can entrench them as ‘other’.

Client demands and the need to be seen to be coping despite the pressures of the work are a potentially destructive mix when coupled with the open-ended hours many practitioners continue to work within their legal workplaces. There is an insidious subtext that flexibility is about ensuring the practitioner is less distracted by, or more free of, outside or competing demands and therefore able to give the same, perhaps even more, time to their profession. As one survey respondent describing flexibility wrote – you can work as long as you like!! One of the complicating factors here is also the perceived difficulty of measuring professional productivity, with many seeing the only possible measure as ‘time spent’.

From the stories solicitors tell, and the numbers of women who continue to be lost to the profession, it seems that the only alternative to a supreme sacrifice in the private sphere is to

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62 IfS0: 3-4.
64 Ibid.
65 Ibid.
67 F3(S) at Q11 Do the following policies exist in your workplace? (exclamations hers).
68 See generally: Bardoel, E Anne, ‘The Case for Flexible Work Options and the “On-Demand’ Professional?”’ (Working Paper Series 16/05, Faculty of Business and Economics Department of Management, Monash University, 2005). (Cited with permission of author.)
sacrifice a hard-earned legal career. Where practitioners continue to juggle the competing demands of both worlds and feel unable to ask for help or to call a halt to the relentless juggernaut, the intensity of their work and the pressures of their broader life commitments can take a grave toll. Practitioners cannot always manage stress and pressure positively.

Stress and pressure grows out of the nature of the work itself, with the constant demands of clients, colleagues and courts. The unrelenting requirement for billable hours, long hours, availability ‘after hours’ and on leave; the culture, at least in some sections of the profession, of delivering electronic documents and correspondence well outside standard business hours; and a need to be ‘visible’ at firm events and projects, client entertaining and pro bono activities, creates a merry-go-round that, for some, never stops.

In the next Section I turn in more detail to the question of hours worked by Queensland solicitors, described by many as a ‘culture of long hours’, and criticised by some as – associated with macho behaviour and attitudes … with some [men] enjoying the buzz of staying at the office late into the evening [as a way to] “recolonize” [the workplace] as a male preserve, as few women are willing to compete on these terms. Such “competitive presenteeism” can also pressure those lower down the hierarchy to adopt the same practices, helping it to become an endemic part of the organizational culture. 69

5.6 IN SEARCH OF LOST TIME70
Research participants raised the issue of the culture of long hours in general, and billable hours in particular.71 In many respects long hours stand as a cornerstone of traditional private practice culture and seemingly form a barrier to a more flexible and creative approach to work. This solicitor’s observations about the ‘male’ way of working echoed remarks reported by other participants about practitioners who not only worked long hours, but who boasted about it – The general male solicitor model is for them to go really gung ho and bore into the work, and want to work long hours.72

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70 Title of classic novel by Marcel Proust.

71 I revisit this issue in Chapter 6, as it is key to a number of concerns solicitors expressed during the research, not least about how hours worked affect notions of professional success.

72 I(f)39: 4 [woman – 50s - principal – regional].
An often-expressed concern about billable hours centred around the fact that many duties and activities were required of solicitors. But, in many cases only the chargeable work performed on client’s files ‘counted’ in terms of their obligations to, and recognition by, their firm. One senior woman described it this way –

Unless you’re also getting those billable hours then they don’t want to know you. Then you get the lowered expectations, regardless of all those other qualities.
[woman – 50s – senior solicitor – part-time – metropolitan]\(^{73}\)

The varied activities that can comprise a solicitor’s working week: presenting seminars, mentoring, administrative requirements, researching a paper, pro bono work, looking up the law for a current file (particularly for younger practitioners), firm meetings, client entertaining, networking activities, compulsory professional development courses and workshops, are, in many instances, not counted as recognised work done by the practitioner because they cannot be billed or charged to a client. This will doubly disadvantage parents with primary childcare responsibilities –

Because a woman with a family they’ve got to work from eight to six maybe if they’re lucky. And so if through the day they do some mentoring, or they do some pro bono work, or they do research for a paper, then they haven’t got the capacity to make up that time the way maybe a young [man], or even a young woman that’s just out of uni, because they haven’t got other commitments.
[woman – 50s – senior solicitor – part-time – metropolitan]\(^{74}\)

Another interviewee described a round of planning meetings, administration meetings, and client marketing activities that were essential for partners, and emphasised: that’s when the big hours come in, because you’ve still got to bill the same amount and do all the extra.\(^{75}\)

Canadian research\(^{76}\) conclusions echo the interview quotations that open this Chapter. Ronald Burke posited that managerial and professional women were unlikely to ever be able to compete with their male colleagues on an equal footing, as ‘the playing field is unlikely to ever be level’.\(^{77}\) He found that (albeit because of other responsibilities) women with children

\(^{73}\) I(f)32: 4-5 [woman – 50s – senior solicitor – experience in various metropolitan firms].

\(^{74}\) I(f)32: 5-6. Also: I(f)46: 4 [woman – 30s – specialist area of law – metropolitan]. Note: Pro bono work is legal work performed for no fee for individuals and/or organisations who could not otherwise afford access to the legal system – refer: Brown, Lesley (ed), *The New Shorter Oxford English Dictionary* (1993) vol 2, 2352. Many practitioners are happy to work ‘overtime’ to assist charitable/worthy causes; but the extra hours add to the overall toll of stress and pressure in a working week.

\(^{75}\) I(f)45: 13 [woman – 40s – part-time – metropolitan].


\(^{77}\) Ibid, 162.
‘devote fewer hours per week to work, are less job involved, have careers as lower priority and spend more hours per week in household responsibilities’. Effortlessly, the structure of many women’s lives prevent them fitting the long hours culture of private practice. Further, it would seem very few leaders of the profession have the perspective and skills to re-vision traditional workplaces, let alone to implement real cultural change.

Some solicitors expressed real frustration not so much with the pressure of billable hours, but with the pressure of long hours regardless of whether billable hours and/or budget targets had already been met. This ‘presence’ has been referred to as ‘display overtime or ‘face time’. Silke Anger discusses the use of long hours for signalling to the employer the high value of the employee. However, it is an overtime that does not necessarily add to output, as ‘[e]mployees work excessive hours in order to be seen’. Ruth Simpson described competition over hours worked as an ‘area of rivalry’ between men in male-dominated organisations. This ‘competitive presenteeism’ was identified by women as a male phenomenon ‘associated with “macho” behaviour and attitudes’. While Robin Ely and Debra Meyerson argue that ignoring the significance of gender equity might encourage the use of ‘face time’ as a measure of commitment.

These findings in the management sphere were echoed by one successful regional principal who had left employment in a large regional city firm because she perceived she had been treated unfairly. She always made over budget, received excellent client feedback, and participated fully in client, firm and professional activities. She had no children at the time. She was rebuked by a male partner for leaving the office before other practitioners did so, although she always left after the close of business. She described it this way –

*I had one annual review where I was told I wasn’t committed to the firm because I wasn’t doing the big hours. But my billings were higher than other solicitors of a commensurate type of law. I resigned fairly promptly thereafter. I just decided*

78 Ibid.
I didn’t want to fight the club. I didn’t want to fight the whole thing.
[woman – 30s – principal – regional]^{80}

She described her former firm as highly successful financially, but with a workplace culture where working time was often wasted. Nevertheless ‘credit’ was given for a ‘presence’ in the office: We [female practitioners] used to joke that we didn’t need to work after hours because we didn’t feel the need to flirt eight hours a day with the [office] girls. So the boys had to work overtime because they didn’t work during office hours.\(^{81}\) She saw no evidence of work life balance despite some of the firm rhetoric: there was all talk about it, but there wasn’t any actualisation of it.\(^{82}\) She described a boys’ club culture where male practitioners were supported by home-based women who could attend to necessary daily chores to ensure the men’s working lives (including unlimited in-office time) could function smoothly.

She did not see policies as making any difference to these entrenched behaviours. There is broad support in the literature for the proposition that workplace policies can, and do, produce inconsistent outcomes. ‘In some cases these policies have brought about value, attitude and behaviour changes; in other cases, these policies have existed only on paper’.\(^{83}\) This latter view was echoed by a number of participants, with one suggesting the policies were made primarily for the firm’s own protection from potential liability – because although we have great policies about flexible working, all that means is if I can’t do the work that I need to do in my own time at the office, I have to do it at home.\(^{84}\)

More direct attempts to circumvent long hours may also be futile. One woman, who opted for part-time work in order to manage the competing demands of a very young family, reached an agreement with her firm to work three days a week. She has now left the profession –

\begin{quote}
One of the reasons for making the decision [to leave law] was the inflexibility of my employer to recognise or reward my additional hours worked in excess of three days. I was told that a senior associate, even if only part-time, was expected to put in unlimited unpaid additional hours if the work required it.
\end{quote}

[woman – 30s – former senior associate – metropolitan]^{85}

\(^{80}\) I(f)43: 6.
\(^{81}\) I(f)43: 5.
\(^{82}\) I(f)43: 7.
\(^{84}\) I(f)50: 4 [woman – 40s – senior associate – national firm].
\(^{85}\) I(f)46: addendum.
This solicitor had no objection to working some additional unpaid time around her required three days, but essentially she was carrying her original full time workload of files and associated client obligations regularly enough, and extensively enough, for this to be a problem.\textsuperscript{86} The files allocated to her on her return from maternity leave were her responsibility. If those files required more than three days a week to properly service them, then the solicitor was required to find those extra hours or days, although no extra remuneration was paid in many instances.\textsuperscript{87}

This raises key human resource management issues where line managers (supervising partners or partners heading work cells or sections within the firm) are giving lip service to a policy making part-time work available. At worst, they have no interest in, or inclination towards, implementing it. At best, they no clear understanding of the implications and requirements for realising such policies. This was the focus for a male practitioner who wrote: \textit{policies may exist, however use of them is frowned upon}.\textsuperscript{88} I will return to this issue later in the Chapter\textsuperscript{89} and again in Chapter 7.

In some circumstances, the pressure to keep the focus on billable hours to the exclusion of other activities can also lead to shortcuts and errors that potentially have disastrous consequences both financially, and in terms of stress levels. One interviewee described a situation where a junior practitioner had been directed to prepare a certain document. The young solicitor had no experience of the document and was uncertain as to some key aspects of it –

\begin{quote}
And instead of him taking time, or thinking he could go and ask a senior partner what to do, he didn’t. And a partner signed off on it who was under constrictions of time and he [the partner] didn’t check. Because any of that time wouldn’t be billable to the clients. And it was catastrophic, a big mistake [that] cost the firm money. That can happen and can affect a young person’s career.\textsuperscript{90}
\end{quote}

The ‘logical’ end point of such time poor solicitors and partners, driven by an unrelenting load of billable hours, has already created problems in other jurisdictions. In some United

\textsuperscript{86} Her story was not unique in this regard.
\textsuperscript{87} The woman was still required to meet the additional childcare costs incurred by the firm’s insistence she undertake these additional hours of work. Also: survey participant F110(S) at Q11 [woman – 30s – employed solicitor – metropolitan – no children].
\textsuperscript{88} M90(S) at Q11 Do you feel able to use [particular workplace] policies? [man – 20s – employed solicitor – metropolitan – no children].
\textsuperscript{89} See: Section 5.10 Best Practice 21\textsuperscript{st} Century, p 5-50.
\textsuperscript{90} I(f)32: 21 [woman – 50s – senior solicitor – metropolitan].
States firms, partners (nearing retirement) are demanding to be paid for time spent away from billable hours in order to train successors, to introduce their clients to new lawyers in the firm, and generally to manage a smooth succession transition.\textsuperscript{91}

Not only can this pressure limit opportunities to take essential time out and debrief, it is a mode of working that isolates individuals and can create the false impression that they are the only one who may not be coping with the stress of the job. One senior solicitor reflected on her observations over many years of the bigger, and also some smaller, firms’ focus on billable hours – \textit{they may be concerned with raising [issues of stress or coping] for fear they may lose their position [and] just come in as though everything is under control’}.\textsuperscript{92}

It is important to recognise that not all firms work to a billable hours regime. Some work to budgets for each fee earner. Some privilege other activities, such as pro bono work and community involvement. Some acknowledge the earning differential in different kinds of work and accept that what may be a low fee generator is still part of the firm’s core business and the overall service provided to clients. Others simply reject a long hours culture as outdated and unnecessary. One senior solicitor criticised the often-reported practice of sending messages and documents late at night or even in the early hours of the morning –

\begin{quote}
I think they’re kidding themselves. The profession doesn’t need to operate like that, and the people with whom we deal don’t operate like that. You always get some people who are trying to pull one over on you by delivering something at 8 o’clock at night. It’s not necessary. It doesn’t make you look clever.
\end{quote}

[woman – 40s – consultant – former partner – metropolitan]\textsuperscript{93}

Other solicitors felt torn by the competing demands they faced. One senior practitioner recalled her own experiences of parenthood many years earlier when she left the private profession (returning later) for an 8.30 to 5 job –

\begin{quote}
I really felt I wanted to give more to my role as a solicitor, but I didn’t want to be taking time away from my children … I thought about it for a year before I left because I really enjoyed what I was doing … There’s that whole attitude that you’ve got to work these long hours.
\end{quote}

[woman – 50s – senior positions in private, corporate, government]


\textsuperscript{92} I(f)55: 14 [woman – former partner, now consultant – regional].

\textsuperscript{93} I(f)48: 4 (emphasis hers). Another solicitor was outraged at the way this culture was promoted as somehow laudable: I(f)49: 3, 4 [woman – 50s – sole principal – metropolitan].
She went on to express concern that perhaps little had changed in the intervening 20 years when it came to pressure to work long hours – *I think it is competitive behaviour for some males [and] I think some of them really are pressured [into it] because they think they need to do that to be promoted to partner.*

While some solicitors involved in the research were clear in their opposition to, or rejection of, the long hours culture, many participants reported taking work home or working back at nights or weekends to simply get the job done. Graph 5.2 below highlights the different accommodations women and men make to endeavour to get work done and to keep work and home spheres as separate as possible. Women were somewhat more likely than men to work back late and so avoid taking work home (pale blue top bar). Where women did report taking work home it was more likely to be ‘sometimes’ (red bar); in contrast to male colleagues, who acknowledged more often than women that taking work home was ‘most nights’, or ‘most weekends’, or ‘all the time’ (yellow bar). The number of practitioners who neither stayed back nor took work home was small for both women and men (dark blue bottom bar).

**Graph 5.2: Q16 – Taking work home**

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Females</th>
<th>Males</th>
</tr>
</thead>
<tbody>
<tr>
<td>Never - but work back late</td>
<td>19%</td>
<td>15%</td>
</tr>
<tr>
<td>Some time</td>
<td>17%</td>
<td>16%</td>
</tr>
<tr>
<td>Most nights/weekends/all the time</td>
<td>48%</td>
<td>47%</td>
</tr>
<tr>
<td>Most weekends</td>
<td>20%</td>
<td>27%</td>
</tr>
<tr>
<td>All the time</td>
<td>20%</td>
<td>22%</td>
</tr>
</tbody>
</table>

94 I(f)70: 3-4.

95 Graph 5.2 is based on: Taking work home never Female: N=7, 6.36%; Male: N=7, 7.29%; taking work home sometimes Female: N=61, 55.45%; Male N=47, 48.96%; most nights/weekends/ all the time Female N=23, 20.91%; Male N=27, 28.13%; never but work back late Female: N=19, 17.27%; Male N=15, 15.63%.
When asked about the need to work such unrelenting hours, many solicitors were quick to say it was client driven, and that they had little or no choice in the demands on their time. The next Section interrogates this claim in more depth.

5.7 ‘IF WE DON’T, WE LOSE THE CLIENT’

Where some practitioners openly decried the legal profession’s culture of long hours, there was still a broad acceptance that the hours were essentially client driven and beyond the control of practitioners, either individually or as a firm, and that the service ethos of the profession must be upheld regardless of personal cost. There was both tacit and overt fear that any failure to meet client demands, however unreasonable, would result in the loss of clients to competitors. This was in turn allied with an underlying belief that solicitors ‘chose’ to provide this self imposed high level and open-ended service to clients in order to succeed (or survive, depending on perspective) in their profession.

One practitioner acknowledged the needs of the client, but also squarely raised the need to assess the firm’s client base and to make decisions about client management as a part of overall practice considerations – Flexibility’s possible. You’ve got to manage client expectations and demands. Maybe you can’t manage some clients. Perhaps you’ve got to look at who your client base needs to be. He acknowledged there was always a risk that clients might leave a firm because they do expect service.

It was the client service ethic that meant some solicitors saw no option but to meet client demands. This solicitor, trying to maintain flexible work arrangements to accommodate young children, spoke about her firm’s top end corporate commercial client base –

We’ll get a deal in and it finishes in two weeks, which means that you need to work quite long hours to get the deal done. Clients have got very high expectations. We’re a very professional firm, a very top of the market firm, which means that … they’re paying big money for our fees so they expect a professional product, a top of the market product, and that’s what we need to deliver – working here that is what is expected. It’s my decision to work here, I choose to work here. You could say, “Why do you do it?” [laughter] That’s the next question I know you’re going to ask. [woman – 40s – senior associate – metropolitan]98

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96 M84(S) at Q17 What do you do to cope with work pressures? [male – 20s – employed solicitor].
97 I(m)75: 17-18 [man – 40s – former sole practitioner – metropolitan].
98 I(f)50: 5.
In one interview, a senior solicitor with a national firm spoke with real knowledge and enthusiasm about the ways the profession could be made more compatible with the broader lives of practitioners. He explained how his own firm was exploring a wide range of options and initiatives including the imminent appointment of a part time (female) equity partner. Equity partnership on a part-time basis is a very clear statement that it is possible to be serious about a legal career and other life imperatives, without loss of perceived commitment, professionalism and respect.99

The same solicitor conceded that his own commitment to his work intruded on to private family time. He said his worst offender was a commercial client he had worked with for years who expected instantaneous service. He admitted he had often phoned her while on holidays because she will want urgent advice within half an hour.100 While one or two particular clients who have 24 hour access may be manageable, open-ended access to all comers makes work life balance meaningless. Some practitioners will insist this is their ‘choice’. However, the elevation of this mode of practice to an entrenched professional norm can close off the debate and label those who strive to privilege other ways of living and other styles of lawyering as ‘unprofessional’ and ‘not serious about a legal career’.

One woman with a young family was actively involved with her firm in formally examining ways that flexibility and accessibility could be achieved. She identified an ‘invisible barrier’ in the firm’s underlying assumption that she could not possibly want a family and partnership. She said her firm did have part-time partners, but no one yet has been made a partner who was [already] working part-time. She posed the question at which many firms falter –

How do you quantify someone’s achievement and their worthiness to become a partner if they are working part-time? Because if you’re part-time you’re not as valuable in financial terms as someone who is full-time, but there should be a way that it can at least be looked at.
[woman – 30s – senior associate – metropolitan]101

A study of discourses that privilege clients was undertaken in two United Kingdom

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99 The appointment of part-time equity (emphasis mine) partners is a very significant breakthrough in Queensland private practice. Whereas a part-time salaried partner was often seen by research participants as possible, this was most likely to be in the context of the ‘alternative’ career paths for women (that usually got them to the letterhead, but then in many cases ‘parked’ them there without any real access to the power of the boardroom and the decision making roles of the business owners/equity holders).
100 I(m)78: 25-26 [man – 50s - senior partner – national firm] (emphasis his).
101 I(f)44: 28-29 (emphases hers).
accounting firms. The researchers suggested ‘the dominance of the client concept both mediated explanations of events and legitimated demanding practices … [and] rendered alternative accounts of life and work within the firms problematic …’102 Importantly for my research, they pointed out that such discourses are significant not only in terms of what they require from the firm’s players, but also for what they may devalue or even ignore. This type of dominant client discourse ‘renders invisible internal managerial controls; … downgrades notions of independence and public service; … marginalizes family, with particular implications for women; and … excludes friends, communities and non-work activities’. Such discourses construct or represent the world of the professional service firm in a particular way that ‘closes off other ways of world making and diminishes the possibilities for articulating challenges’.103

I argue, in line with this work done by Fiona Anderson-Gough and others, that an unquestioning account by many Queensland solicitors of the client as the key driver for working long hours – and a concomitant acceptance that ‘this is what being a professional is about’ – is an example of highly successful socialisation of practitioners.104 New practitioners come to ways of making sense of the pressures and stresses of their working world, as did their professional predecessors. ‘They begin to develop theories of work and home that are appropriate [within the existing organisational culture]’.105 Whether they think in terms of the client, their individual firm, or professional success, practitioners who are forced to prioritise work above all else will see that home ‘becomes something that supports career’. The weight of an approach that privileges the dominance of the client (and the enclosed world of the firm that operates so successfully to reinforce this construct) is a powerful and ‘significant factor in shaping notions of professionalism … [and] also fundamental notions of identity and priority in life as a whole’.106

What is significant here is that the ‘success’ of the dominant client discourse is such that

102 Anderson-Gough, Fiona, Grey, Christopher and Robson, Keith, ‘In the name of the client: The service ethic in two professional service firms’ (2000) 53 (9) Human Relations 1151, 1153. There are many similarities between the accountancy and legal professions, not least the fact that ‘as many women as men enter the accounting profession but the ledger is skewed at the partner level’ – see, for example: Day, Annabel, ‘Balancing books and families’, Australian Financial Review (Melbourne), 9 July 2004, 62.
103 Anderson-Gough et al, above n 101, 1171-1172. The U.K. researchers also noted that ‘a culture of “sacrifice” of personal time was certainly evident’ (1160).
104 Ibid, 1165
105 Ibid, 1164.
106 Ibid.
concerns about ‘gender discrimination becomes peripheral … because those uttering them are liable to be construed as unprofessional for not completely serving the client’. Anderson-Gough and her co-researchers point out that a universal acceptance of the demands of the client can effectively render invisible the role of management in setting and demanding more hours from employees. The sense of ‘personal choice’ and the ‘perception of autonomy’ that professionals claim as their own is preserved in the guise of ‘responsibility for time-management and client service’ which resides with the individual practitioner.107

The legal practice culture of long and unrelenting hours may not exist in all Queensland law firms, but is instantly recognisable by all solicitors. Such a culture seems wholly incompatible with any move towards flexibility to enable practitioners to privilege and enjoy other dimensions of their lives. Some research in the United States has argued for a model that sees work and outside life as complementary, rather than being in conflict. This approach is known as the ‘enhancement model,’ and explicitly states ‘the goal is not necessarily about reducing the work side of the equation’ unless that has reached ‘an extreme’ (emphasis mine), but it is about creating ‘conditions under which people feel that work and life are working in harmony’.108 This continues to emphasise the work side of the equation, with flexibility being about ensuring work can be completed without ‘interference’ from other competing demands.

I argue that any discussion is stifled at the outset because of the conventional wisdom that the hours are client driven and beyond the reach of internal workplace practices. Individual solicitors continue to report individual client understanding and support (with the sole exception perhaps of some corporate clientele), but speak of an overriding ‘client demand’ merry go-round.109 I suggest that the inherent conflicts in solicitors’ understandings and experiences of client expectations leaves them unclear about, and ill-equipped to consider, ways their legal lives can retain workplace productivity but encompass a more realistic work-life balance.

I will return to the question of client driven demands later in this Chapter,110 but first I turn to

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107 Ibid. 1167, 1168.
109 F15(S) at Q11 Do you feel able to use [particular workplace] policies? [woman – 30s – partner – regional].
110 See: Section 5.9 Is the Impossible Possible? p 5-43ff.
some of the terminology used in the work life debate. When talking about ways to avoid or offset sacrifice within their professional and private lives, research participants freely used the terms family friendly, flexible work practices, and work life balance. The next Section interrogates some of these terms, the policies they represent, and how such policies might operate to benefit, or otherwise, private practitioners in Queensland.

5.8 WHAT’S IN A NAME?

It is instructive to clarify what is meant by ‘work-life balance’, ‘flexible’ and ‘family friendly’. Burke traced the latter term to a 1989 article where it was coined to describe commercial organisations ‘attempting to support work-personal life balance’. Others see this term as ‘problematic, as the nature and complexity of family is not always acknowledged, and the word friendly can be taken to imply favours rather than entitlements’. A 2005 article noted that both the terms ‘work-family balance’ and ‘work-life balance’ had been in use for some time ‘to describe the extent to which an individual is equally engaged in – and equally satisfied with – his or her work and non-work roles’. The Queensland authors of this article explained their preference for the ‘work-life’ term because it expanded ‘the construct’s relevance to employees struggling to balance non-work responsibilities that do not include dependent childcare and … lessen[ed] the strongly gendered nature of work-life policy utilisation’. While I suggest it is perhaps a vain hope that language alone will enhance policy utilisation, the terminology ‘work-life’ is now commonly seen.


Note: In 1985 an article appeared that examined the sources of conflict between work and family roles, viz. Greenhaus, Jeffrey H and Beutell, Nicholas J, ‘Sources of conflict between work and family roles’ (1985) 10 (1) Academy of Management Review 76. This article in turn reviewed (76) earlier American material including: identification of role conflict as a source of strain for men (Kahn, Wolfe, Quinn, Snoek and Rosenthal, 1964); the shift to dual income households (Kanter, 1977); heightened concern for employee quality of life (Walton, 1973); changes in meaning of success (Tarnowieski, 1973); changed expectations of self-fulfilment (Yankelovich, 1981).


114 McDonald et al, above n 113.

115 See, for example: Seron and Ferris, above n 8, for an analysis of the gendered social capital of flexible time. See also Smithson, Janet and Stokoe, Elizabeth H, ‘Discourses of Work-Life Balance: Negotiating ‘Genderblind’ Terms in Organizations’ (2005) 12 (2) Gender, Work and Organization 147.
I see the use of ‘work life balance’ as more useful than ‘family friendly’ in that it opens up the possibilities of interests, needs and demands beyond child bearing and rearing. The term ‘work-family balance’ continues to be used by some researchers, commentators, human resource management practitioners, and solicitors.117

It is strongly evident in interview themes that many solicitors, women and men, typify other research findings that the role of family is likely to be paramount within their overall sense of satisfaction, wellbeing and achievement. This was strikingly illustrated by one interview participant who worked two and a bit days per week in a section of a large firm where she felt valued and respected as a key contributor, and where her immediate manager accorded her total control over her hours and the management of her work so that she could be available for school age children. She enjoyed having a career and expressed very positive views about the future for her family and her professional roles.118

This resonates with published research on lawyers in other Australian jurisdictions. In 1996, a Victorian report found women and men identified the same key factors in overall ‘life satisfaction’ – some autonomy in one’s own life, an acceptable level of job satisfaction, connections beyond immediate family, and family relationships.119 In West Australia a 1999 report found that issues of ‘personal and professional balance’ were integral to practitioners’

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116 Recent literature tends to use ‘work/life’ rather than ‘work life’ or work-life.’ I think the use of the ‘/’ illustrates the competition, or potential collision, between the two, and I prefer the other two formats as more compatible with the notion of both co-existing. In this thesis I use ‘work life’ unless there is direct reference to the work of others, whose original terminology is then adopted.

117 In 2002, nearly 20 years after his co-authored exploration of sources of conflict between work and family roles (Greenhaus and Beutell, above n 111), Jeffrey Greenhaus, in collaboration with Karen Collins and Jason Shaw, examined the relationship between work-family balance and quality of life among certified public accountants. These researchers considered three separate elements of work-family balance: time, involvement, and satisfaction. For them, balance was reached when equal time, involvement and satisfaction was spent and/or experienced in the work and family roles (Greenhaus et al, above n 113, 510). They concluded that those with a greater investment of time and involvement, and greater reported satisfaction, in family (within their research framework, ‘unbalanced’ individuals) ‘experienced a higher quality of life than balanced individuals who, in turn, experienced a higher quality of life than those who spent more time [involvement and satisfaction] on work than family’). Participants in my research used the notion of ‘balance’ to encompass a meeting of needs and demands in the various areas of their lives on a highly individual basis, and without ascribing some formal quantification/measurement of time or other factors. It was clear from the tenor of the various interviews that ‘balance’ (and attendant quality of life) was achieved by some solicitors even though, in the context of the work of Greenhaus, Collins and Shaw, they were ‘unbalanced’ towards a higher work involvement. The point of ‘balance’ must tip at different stages in a solicitor’s life course. See: for example, the comments by practitioners reflecting the shifting influence of family factors in success in Chapter 6. In the context of this thesis, I suggest any mathematical approach to an understanding and/or definition of balance is not particularly helpful.


reported quality of life. In New South Wales in 2003, women and men within the legal profession registered similar dissatisfaction levels with ‘lifestyle balance’; and a similar number reported dissatisfaction with the availability of flexible hours, with less than half of all practitioners being satisfied (36 percent) or very satisfied (10.4 percent). Such views are continuing to come through strongly in annual professional surveys as canvassed elsewhere.

Within the broader Australian community, a 1998 report acknowledged there was a wider examination of ‘work and family issues’ since Australia’s 1990 ratification of International Labour Organisation Convention No 156 Workers with Family Responsibilities. More recently, the Human Rights and Equal Opportunity Commission described balancing paid work and family responsibilities as one of the biggest challenges for 21st century Australia. The Commission was clear that family responsibilities extended beyond parenting, to caring for elderly or disabled family members. Another 2007 report stressed the significance of working ‘long and unsocial hours’ that result in ‘spending less quality time with … families and friends’, dysfunctional family environments, and negative health outcomes.

While these agency reports can spark community debate, they do not impose obligations, enforcement provisions or sanctions. The agencies that commission them and subsequently disseminate information are working with the ‘soft tools’ of community education. The

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122 See: Section 5.10 Is the Impossible Possible? p 5-43ff. Also: Chapter 3, Section 3.7 Sisters-in-Law, p 3-22; Chapter 3, Section 3.8 Lessons From Abroad, p 3-37.
Queensland legal profession does not differ from the broader Australian workforce where: bargaining for conditions is decentralised; individual workers may not be able to match an employer manager (or employee competitor) in bargaining skills; and an employer manager may not have knowledge of a range of workplace practices or the training and skills to implement them. This in turn ensures workplace policies to promote work and family balance ‘are very unevenly distributed within and across workplaces, and that development and implementation is very heavily dependent upon managerial prerogative’.126

More debate and discussion is needed in the context of Queensland legal practice to better understand the issues practitioners identified as contributing to their sense of ‘balance’ and wellbeing, particularly as participant responses suggested a strong connection to job satisfaction and solicitor retention rates. It is imperative that any exploration of individual perceptions and experiences be coupled with an investigation of particular organisational contexts and the wider professional support for, and promotion of, work life policies.127 In 2005 Paula McDonald, Kerry Brown and Lisa Bradley identified five dimensions of work-life policy utilisation, namely: management support, career implications, organisational time expectations, gendered perceptions around policy usage, and co-worker support.128 The authors place these within the context of organisational work-life culture where the identified dimensions mediate the gap between the provision of policies and their utilisation by employees. Later research expands these dimensions to six with ‘management support’ being differentiated from ‘organisation support’. This is in line with my own research where issues of support from managers/supervisors and from other colleagues/peer groups within the organisation (as well as the organisational structure itself) can be competing and conflicting factors. I suggest these would be a particularly useful starting point for further Queensland research, as they have all been raised in my research project.

While balance, however individual that may be, is the goal, flexible practices are a means to achieve this end. Flexible practices now cover a good deal of ground. Some legal practices offer no more than limited time off for a family emergency over and above the standard holiday and sick leave entitlements. Solicitors described difficulty or inability in getting leave

127 I return to the specific issue of policy utilisation later in this Chapter. See: Section 5.9 Rhetoric and Reality, p 5-36, esp 5-40ff.
128 McDonald, Brown and Bradley, above n 113, 48-49.
to attend a funeral, to visit a child in hospital, or to study for legal exams.129 Flexible practices can and do extend, in various combinations, to many other possibilities.130 For nearly two decades, commentators have argued that a failure to implement family friendly practices would see organisations counting the costs in terms of increased absenteeism, staff turnover, higher training demands, performance losses, and in some situations, legal costs.131

Potential policy offerings are now complex and varied. The idea of flexible working hours can encompass flexibility within the working day, week, or month.132 Flexible policies can range over permanent part-time or casual work, term-time working (to meet school based demands for children), working from home (including telecommuting), job sharing, career breaks (for study, charity work, travel, sport, etc), childcare (organisation based or funded and on a regular and/or emergency basis), eldercare support, and phased retirement.133 These are in addition to the more commonly seen maternity or parental leave, compassionate leave, and study leave.

Within the flexibility basket, some legal firms also provide stress management support, such as gym memberships, yoga classes, massage, or chiropractic services.134 These are an interesting contrast to the technology ‘benefits’ also on offer, such as: mobile phone, laptop, home computer connection, BlackBerry; together with a range of financial remuneration, befitting a long hours culture, that includes car parking, after hours travel allowance, and subsidised meals. There is a good deal of anecdotal evidence among solicitors that the technological tools that promise more ‘flexibility’ have, in fact, created longer hours and a

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129 ‘Entitlements’ are a very ad hoc affair.
130 In the 1990s, typical examples included: flexible working hours (agreed hours spread over a set time period); time off in lieu of extra hours worked; use of current and accrued sick leave (for carer responsibilities); part-time work (including pro rata accrual of benefits); job sharing (one permanent job shared between two permanent part-time employees; career breaks (periods of unpaid absence for child rearing, travel or study purposes); part year employment (allows an employee to take unpaid leave to match school holiday periods); and family leave (short term leave to meet family responsibilities may range from a few hours to a few days). See: Women’s Equity Bureau New South Wales Department of Industrial Relations, Flexible Work Practices (c1998) 2-3.
132 There may be flexibility to ‘carry forward’ credit (or debit) time; to take off ‘core’ time (hours when all staff are normally required to be present) in certain circumstances; staggered working hours (where agreed start times determine finish times); agreed work schedules (to operate around peak work times); compressed working week (where full time work load is accomplished in less time allowing the employee time away); reduced or part time hours (with payment adjusted accordingly); variable hours (where employee is free to choose subject to meeting organisational objectives); or time off in lieu (i.e. instead of payment for additional hours). See: CCH Editors, Human Resources Management Digest (1998) 60,502-60,504.
133 Ibid, 60,501.
heightened intrusion of work into the private sphere. One commentator said the ubiquitous BlackBerry was so omnipresent and ‘addictive’ that it was known as the ‘crackberry’.¹³⁵

A 2006 Canadian commentator noted that there was an apparent increased reliance on technology, and that there were indications of a growing connection between technology use and work life conflict.¹³⁶ There is no published research about the Queensland legal profession’s uptake and use of these technologies and, in particular, whether or not they promote or curtail work life balance. There is recent research on the use of the BlackBerry in the Australian and French finance and investment banking sector, where ‘everyone surveyed found that BlackBerry usage increased the volume of their work’.¹³⁷

This long hours, on call availability, ‘flexibility’ can create a scenario where accommodation is all about the private world being absorbed by the public/professional world, with the family bending to ‘fit’ incessant career demands, as this anecdote illustrates –

_There’s more acceptance of people plonking their kids in day care than there is of somebody saying, “I want to work part-time”. I can’t imagine what the poor blokes [cop] if they want to work part time to be with their kids. [The way the profession is structured] disadvantages men [too]. One dad I know had the high-powered job [as a corporate lawyer]. But he had cab charge [vouchers], so he was delivered home to kiss his kids goodnight [and then returned] to the office to continue working._

[woman – 50s – litigator – metropolitan: describing male colleague]¹³⁸

The growing use of the ‘work life’ nomenclature to cover the range of policies and practices in 21st century workplaces satisfies the call of researchers, and practitioners, to no longer ignore the interconnectedness of home, work, and family decisions, however tense and


¹³⁸ I(f)38: 21.
problematic that connection may be. Some legal practitioners still struggle with the concept that these worlds might mix, that the separate public-private spheres that gave rise to the benchmark male worker might not be so separate after all. Some apparently fear that a collapsing of hitherto impermeable boundaries may mean a death knell for high standards of professionalism and work output. More positively, at least a part of the collapsing boundaries phenomenon can be attributed to the desire of some men to become more involved in the private sphere, and to take a more active role in home and family life.

I argue we can no longer support claims that part-time women lawyers are, by definition as it were, primarily home centred or committed to a marriage, rather than a legal, career. It is clear when we turn to solicitors’ individual notions of success (in Chapter 6) that both women and men talk about the importance of a balance between work and home lives. It is not at all uncommon for men to talk of the importance of a meaningful involvement in home and family as integral to their personal view of success; and we hear women speak of a significant need to maintain their professional lives and skills while also being involved in caring for children.

The daily reality of the ‘balancing’ act between the public and private spheres does require flexibility. For Queensland solicitors this cannot effectively occur in a policy vacuum, or at the instigation of isolated practitioners, or of a few firms. As other State legal bodies have recognised through extensive research and consultation with their members, the whole

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140 This concern/fear over merging spheres continues to operate at some instinctive, unarticulated level for many in the profession. A commercial lawyer of my acquaintance moved to a new office space in his law firm and asked me to help select some paintings. I suggested he include a framed photograph of his much adored first grandson. He was uncomfortable and said the pictures were needed for an office (emphasis his). Thus, while a small, framed photo on his desk (not necessarily visible to other practitioners or clients) was acceptable, a more prominent display of his other/family life was not. Conversely, I was aware of a childless male lawyer who was a family law specialist and whose office contained many prominently displayed photographs of happy smiling children. The photos were of various nieces and nephews. He said it gave the clients confidence to think he understood about children from first hand experience (and he did not correct client assumptions that the children were his own). See generally: Kanter, Rosabeth Moss, Work and Family in the United States: A Critical Review and Agenda for Research and Policy (1977).


142 See, for example: Walsh, Janet, ‘Myths and Counter-Myths: An Analysis of Part-Time Female Employees and Their Orientations to Work and Working Hours’ (1999) 13 (2) Work, Employment and Society 179.
profession needs to take a lead, entrenched masculinist cultures need to shift, and we need to open up a dialogue around the value of children in a broader societal framework, and around the long term health and wellbeing\textsuperscript{143} of solicitors who work within the private profession. What is striking about the Queensland position is that the considerable body of research and reportage from other states (particularly New South Wales and Victoria), and from some overseas jurisdictions, has essentially moved on from basic investigation and exploration of these issues to detailed work on practical policies and strategies for implementation of legal workplace equity and flexibility.\textsuperscript{144}

Some of the matters reported by practitioners depict a profession that is not only unfriendly to private or family life, but that, in some circumstances, is actively hostile to it.\textsuperscript{145} Some scenarios can only be viewed as inimical to practitioners’ ‘other’ lives. In the next Section I turn to the survey data around the actual policies or benefits that solicitors reported as being available within their firms, and whether or not individual practitioners saw these as accessible.

\section*{5.9 RHETORIC AND REALITY}

The Queensland profession is plagued by serious disconnects between what the profession, or parts of it, talks about officially in terms of flexible work practices within a modern and

\textsuperscript{143} ‘Wellbeing’ is a term that has appeared in work done in other jurisdictions – see, for example, the emphasis placed on solicitor wellbeing by the New South Wales Law Society: above n 120, p 5-31. Australian researchers have recently argued to extend the concept of family-friendly to include the notion of ‘worker wellbeing’ – see: Strazdins, Lyndall, Shipley, Megan and Broom, Dorothy H, ‘What Does Family Friendly Really Mean? Wellbeing, Time, and the Quality of Parents’ Jobs’ (2007) 33 (2) \textit{Australian Bulletin of Labour} 202.


dynamic profession, what individual firms promote and advertise as being on offer in their particular workplace, and what individual solicitors really feel and believe about instituting or utilising policies that promote flexibility and work life balance. As numerous interview excerpts throughout this Chapter have demonstrated, Queensland solicitors are very much aware that the issues of work life balance and workplace flexibility are marked by a rhetoric that often differs from a solicitor’s lived reality.

Solicitors taking part in the Queensland survey research were asked about the availability of a range of workplace policies, specifically: part-time work, job sharing, paid parental leave, unpaid parental leave, flexible working hours, holiday scheduling to take account of family needs (e.g. to fit school holidays), emergency leave (e.g. to attend to a sick child), scope to regularly participate in some sporting activity, and paid personal sick leave. In reporting on the existence of these policies, there was little difference between the responses of women and men practitioners.

The data did reveal two areas of statistically significant difference between women and men. In the case of unpaid parental leave women (84.27 percent) were far more likely than men (55.81 percent) to report such a policy was available. In respect to paid sick leave, women (94.39 percent) were again far more likely than men (80.85 percent) to report their workplace had this policy. I suggest these findings reflect both workplace and broader societal cultural norms whereby men are still far less likely than women to seek unpaid leave to spend nurturing time with young children, and where men are still likely to be the primary breadwinners when children are young and, as such, may not even be in a position to request leave regardless of what may be ‘available’ in the workplace. The findings may also reflect the greater likelihood that women will take some form of ‘legitimate’ leave (such as paid personal sick leave entitlements) to deal with family emergencies, as I have discussed earlier in this Chapter.

The research survey was completed as legal firms were entering the 21st century, and yet substantial numbers of solicitors did not have some quite basic human resource policies

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146 MW-U=2738.00  Z=-4.106  p=0.000. See: full details in Table 5.6: Workplace policy availability and accessibility, p 5-41.
147 MW-U=4348.00  Z=-2.947  p=0.003
148 See: Section 5.5 Crisis Responses, p 5-15 and Table 5.4: Q12 – Domestic emergency/crisis response at work, p 5-16.
available to them in their workplaces. Less than 70 percent of women and men recorded a ‘yes’ to the availability of part time work (69.15 percent). Just over half reported access to flexible working hours (55.28 percent). A little over one-third had access to job sharing (35.50 percent). Over a quarter reported the availability of paid parental leave (28.65 percent). Stories recounted in 2005 and 2006 during the interview phase of the research confirmed and strengthened the statistical data to the effect that there was far from universal availability of a range of mainstream workplace flexibility policies.149

I argue that paid parental leave, job sharing, and flexible working hours are the three key, basic policy areas to foster genuine flexibility suited to a 21st century workplace. Survey participants generally reported the lowest levels of availability in these areas. The reported existence of these, or other, policies does not necessarily signify any confidence by practitioners that the policies will be accessible to them. Reported ‘availability’ by individual practitioners may also not accord with the ‘existence’ of policies as claimed by firms. Policy existence is rendered meaningless if policies are not regularly reviewed, updated and promulgated; if there are no adequate induction and workplace training schemes in place; if the workplace culture sends a message to a solicitor that high office visibility is the most prized attribute; and if those who seek to use a leave ‘entitlement’ are criticised or sidelined.

I have considered elsewhere150 the survey findings where solicitors reported that clients as a group were likely to treat both women and men with respect and co-operation and to value their work. This fits with material from research interviews that individual clients could be supportive of practitioners’ needs to employ a flexible approach to balance family demands. Some practitioners reported that clients were unfazed by the occasional home ‘drama’, whereas it was more likely to be colleagues who were unable to accept the intrusion of non-work demands. One busy sole practitioner described a typical scenario –

*I have said to my clients: “Look I’ve got a sick kid in hospital. I’m sorry I can’t do anything to help you. But maybe this person, or this person at [other firms] can help you out”. And if I lose a client, I prefer to lose the client rather than the child.*

As a sole practitioner, this solicitor has the ‘luxury’ to opt to lose a client, but she has found the reality is in fact very different, and *those clients have come back anyway.*

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149 The survey findings as to workplace policy availability were also examined against various demographic data collected through the research and these details are included in Appendix 11.

150 Thesis Chapter 4, Section 4.7 Inside Legal Workplaces, p 4-37, esp Table 4.7.4: Q10(4) – Perceived workplace treatment by clients, p 4-47.
practitioners have been happy to assist. This practitioner strenuously rejected any suggestion that clients will never accept a situation where the solicitor is not available all the time. She said this was definitely *not true. When there have been crises generally people are very understanding.* This practitioner still struggled with the concept of flexibility and how she might implement that more effectively in her own circumstances. But, she also believed that the profession had created its own trap of constant yet almost unachievable availability – *It’s a myth we’ve created about ourselves.*

Practitioners were clear about the need to privilege family in their busy working lives, and have often achieved de facto family inclusive practices without official approval or censure, as this interview excerpt demonstrates –

*If I want to go to school and see my children in a presentation or a play or to spend an hour at the sports’ day, I just go. It’s not that I purposely don’t tell anyone, but I just take it. If anyone dared have a go at me about that, I’d just tell them where to go. You’re in here at weekends, you’re doing extra work at home at night. So if I take an hour off at 10 am ..., and I’m still here working from 5 to 6, what’s the difference? It should be about flexible working hours if you’re getting your billings, or you can make up the hour somewhere else.*

[woman – mid 40s – senior litigator – national firm]

Apart from a general commitment to a level of flexibility to manage family demands, whether officially sanctioned or not, practitioners on the whole remained reluctant to avail themselves of entitlements or to accept any favours; or perhaps, were aware no favours would be given. This was true even in circumstances that would attract basic personal sick leave; or generally in circumstances where most people would consider it reasonable to take brief time out from the office. Some research participants observed women were far less comfortable about seeking entitlements or concessions, again raising possible issues of self-confidence. While it is the case that women generally are more junior, and arguably less sure of their ground and entitlements when seeking time away, the observations of practitioners in the context of overall interviews were clearly not restricted to junior versus senior solicitors. I suggest this poses queries about women’s self-confidence, which I have found to be a significant peripheral issue in my research. This can clearly affect whether or not a solicitor feels able to access workplace policies. I revisit this issue in more detail in Chapter 6 within the broader

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151 I(f)43: 21-22, 10 [woman – 30s – sole principal – regional].
152 I(f)43: p 10.
153 I(f)37: 16 (emphasis hers). Also: I(f)38: 18-19 [woman – 50s – litigator – national firm].
154 I(f)76: 16-17.
context of the examination of success and how that is defined and understood by practitioners.155

Survey respondents were asked not only to identify which policies existed in their workplace, but where a policy was identified they were also asked whether they felt able to utilise it. As interview excerpts have shown, policy accessibility may be very different from availability. Moreover, formal availability may be irrelevant where a practitioner is able to confidently assert her/his conviction that personal time out is necessary or appropriate, or where a particular managing partner or section head has a particular and positive attitude towards workplace flexibility. Where a solicitor felt unable to access a policy that nominally allowed for flexible work options, this in turn may have a direct impact on the practitioner’s subsequent ability to engage in a range of lifestyle strategies to manage workplace stress.

Regardless of basic policy availability, employee knowledge, or management skills in policy implementation, the survey findings for policy accessibility draw a very different picture to the genuine beliefs of some legal firms that they provide good levels of flexibility and a range of options for their professional staff, and to the reports of practitioners that policies may be ‘on the books’. There is a clear dichotomy between policy existence and policy accessibility, and this has been clearly identified in other organisational settings and aptly termed ‘the provision-utilisation gap in work-life policy’.156

The following Table 5.6 highlights this provision-utilisation gap in respect of the policies within Queensland legal firms. The Table lists each policy with the numbers, and percentages, of women and of men who reported the existence of the policy, and then the numbers and percentages of those who indicated they felt able to use that specific policy.157

155 I(f)76: 16-17 [woman – 30s – employed solicitor - metropolitan]. See: Chapter 6, Section 6.10 A Matter of Confidence, p 6-37ff.
156 McDonald et al, above n 113, 37.
157 The total numbers and percentages of all solicitors answering ‘yes’ to the availability/accessibility of any specific policy are also shown. Table 5.6 shows the yes answers only – it does not include the no/not applicable answers.
Table 5.6: Q11 - Workplace policy availability and accessibility

<table>
<thead>
<tr>
<th>Q11 (Policy) – availability and accessibility</th>
<th>FEMALES</th>
<th>MALES</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>policy</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Part-time work policy</td>
<td>yes</td>
<td>78</td>
<td>72.90</td>
</tr>
<tr>
<td>Job sharing</td>
<td>yes</td>
<td>35</td>
<td>33.02</td>
</tr>
<tr>
<td>Paid parental leave</td>
<td>yes</td>
<td>28</td>
<td>31.11</td>
</tr>
<tr>
<td><strong>Unpaid parental leave</strong></td>
<td>yes</td>
<td>75</td>
<td>84.27</td>
</tr>
<tr>
<td>Flexible working hours</td>
<td>yes</td>
<td>53</td>
<td>50.96</td>
</tr>
<tr>
<td>Holidays to suit family needs</td>
<td>yes</td>
<td>87</td>
<td>82.86</td>
</tr>
<tr>
<td>Emergency leave</td>
<td>yes</td>
<td>102</td>
<td>95.33</td>
</tr>
<tr>
<td>Scope sporting activities</td>
<td>yes</td>
<td>69</td>
<td>65.09</td>
</tr>
<tr>
<td><strong>Paid sick leave</strong></td>
<td>yes</td>
<td>101</td>
<td>94.39</td>
</tr>
</tbody>
</table>

Table 5.6 data show that, apart from men’s confidence in their ability to enjoy scope to regularly participate in some sporting activity, and their somewhat surprisingly high (compared to women) claimed ability to job share, practitioners’ general perceptions of policy accessibility across the board are low. It is primarily to accessibility that the focus of this Section now turns.

As I have outlined, possible reasons for low levels of policy accessibility may include: a lack of confidence about utilising policy; an unrelenting pressure for big hours in the office (leaving no actual time for, or being too exhausted to contemplate, other pursuits); poor management practices; powerful cultural norms that predicate against workplace flexibility and concomitant policy utilisation; fear of being seen as not serious about career considerations; concerns about negative performance appraisals and assessments and consequent loss of remuneration benefits or progression; different perceptions tied to firm size; or, some combination of these. Only targeted research in the Queensland context will
assist in unpicking the complexities that lie behind the claimed existence of policies that should promote flexibility and the very poor uptake of these policies.

At least part of the explanation must be found in traditional workplace cultures and inadequate management practices. One solicitor in a medium size city firm wrote on her survey instrument: *I am not sure whether my employer has the above [listed] policies or whether they are, or can be, used.* While another said that: *although there is no formal policy re part time work and flexible working hours for professionals, these arrangements are allowed on an ad hoc basis ... a policy across the board would be preferable.* Other solicitors felt that: *Flexible working hours applies more to some staff than others – [I] feel flexitime would be ‘frowned upon’.* Even where policies existed, practitioners felt constrained because *part time work and flexible working hours are very grudgingly given;* or, *policies may exist, however use of them is frowned on.* While another felt disadvantaged because *holiday scheduling for school holidays works against me being single.*

Recent Victorian research describes the possibility of creating an environment imbued with dissatisfaction, misunderstanding and disappointment if the issue of legal workplace flexibility is mishandled between employer and employee. That tension may also be evident between work peers. Queensland solicitors echoed the experiences of their southern colleagues who had reported flexibility was often not a problem for clients, ‘but colleagues take a while to come around …’ Policies that do exist in Queensland legal workplaces are often agreed, negotiated, adopted or imposed on an ad hoc basis. Sometimes the lack of any comparative industry knowledge is striking, as was apparent when this woman described a previous legal employer –

*I remember when I was first asked to sign an employment contract I asked the senior partner about what their provisions for maternity leave were, because*

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158 S(f)106 at Q11 Do you feel able to use [range of policies]? [woman – 20s – city – medium size firm].
159 S(f)16 at Q11 Do you feel able to use [range of policies]? [woman – 30s – city – medium size firm].
160 S(f)87 at Q11 Do you feel able to use [range of policies]? [woman – 20s – regional – small size firm].
161 S(f)59 at Q11 Do you feel able to use [range of policies]? [woman – 30s – regional – small size firm].
162 S(m)90 at Q11 Do you feel able to use [range of policies]? [man – 20s – city – medium size firm].
163 S(f)79 at Q11 Do you feel able to use [range of policies]? [woman – 30s – city – large size firm].
165 Law Institute Victoria and Victorian Women Lawyers, above n 144, 38. One Queensland partner who worked four days a week described an ongoing tension in her relationship with another (full time) partner describing this as: *probably my greatest challenge at work l(f)40: 7, 12 [woman – 30s – flexible partner – regional].*
none were in the contract. He just looked at me, said, “We’ve never thought about it”, and left [the room]. I remember they came back with some stupid ‘one week for every year of service’ clause.

[woman – 30s – flexible partner – regional]¹⁶⁶

What emerges is the almost random nature of policies, and perhaps more significantly practices, across legal workplaces, sometimes within a single workplace. The level of human resource management knowledge and awareness, together with the people management competence, of an individual partner or senior solicitor heading a firm or work unit will often be the determinant of what flexible work practices are accessible to individual solicitors. This appears to be true regardless of the existence or otherwise of formally qualified human resource professionals within a firm. Policy accessibility is continually complicated by the culture of long hours,¹⁶⁷ and the reluctance of practitioners for a range of reasons to take advantage of whatever benefits may technically be on offer. Accordingly, the next Section asks whether flexibility is achievable in the solicitors’ branch of the Queensland legal profession.

5.10 IS THE IMPOSSIBLE POSSIBLE?

While we have seen that sport continues to hold a privileged place in some parts of the profession, in some workplaces the spotlight has been turned so intently on the need to respond to and accommodate family responsibilities that other needs and interests were effectively excluded. In an unusual finding, one woman reported that practitioners in her firm had felt they couldn’t ask to work flexibly to do anything other than to care for children. She said this misunderstanding of the breadth and availability of flexible work policies had seen an elite athlete leave the profession, and had also caused concerns for one practitioner in terms of their desire to move to a four day week to allow them to work for a charity each week.¹⁶⁸ It is key to the ultimate workability of flexible work practices that there is a clearly defined availability that does not limit policies to a specific section of the workforce, such as parents.

¹⁶⁷ A recent media report of research in Victoria on the billable hours system referred to the system as an ‘impediment’ to the legal profession’s take up of flexible work policies. Researcher Iain Campbell linked the time-based billing culture with ‘a decline in quality of life within the profession’. Campbell notes the billing system is an ‘administrative’ tool, and is surprised by its use as a ‘management’ technique. Reported in Berkovic, Nicola, ‘Time for change: billable hours drive young solicitors out of the law’ The Australian (Sydney) 8 February 2008, 39.
A 2006 online survey in the United States of America asked associates (i.e. non-partners) ‘whether they would be willing to earn less money in exchange for lower billable hour requirements. Of the 2,377 lawyers who responded, 84.2 percent indicated they would work for less money if their billable hour minimums were cut’. But, as one commentator wryly remarked, ‘try telling your managing partner that you want to cut your billable hours. It might work in some firms that recognize value in addressing lifestyle concerns. But other firms will question your commitment to your career’.

In Australia, a 2007 survey reported that more than half (58 percent) of respondents were considering leaving their current positions within private legal firms. This compared to 49 percent in the 2006 report. Many of these showed no interest in moving to another private practice law firm. While 43 percent said they would move to another firm within private practice in 2006, only 30 percent indicated that same willingness in the 2007 survey. ‘Importantly, when asked what firms could do to increase their job satisfaction, respondents listed a better work life balance …’ as the first item on their list of desirable improvements.

As I have recorded, some legal workplaces do, of course, have policies that are accessible to practitioners. However, the existence of policies to support practitioners in their efforts to manage family needs, or other agreed legitimate interests calling for flexibility at work, can mean other (especially non-parent) practitioners will be disadvantaged. One woman in a major city firm had no children, but was considering what she wanted in her life, and contemplating some further study. She applied unsuccessfully to go to a nine-day fortnight –

[Because] I didn’t have a legitimate reason. I didn’t have family commitments. I didn’t have religious or political commitments, or charitable commitments. I didn’t have sport commitments. For me to simply have ‘me’ time to explore other interests was not considered a good enough reason for adopting flexible work arrangements. They were very concerned if they said yes to me, then everybody would want to do it – it’d open the floodgates. I argued that wouldn’t necessarily be the case because a lot of people are financially driven and to drop a day requires a drop in salary and a lot of people have set up their lives where they can’t afford to do that.

[women – early 30s – senior associate – metropolitan]


170 Ibid.


172 See: Table 5.6: Q11 – Workplace policy availability and accessibility, p 5-41.

173 If46: 24-25.
She went on to outline some problems around working overtime that single and non-parent female lawyers had raised with her in her mentoring role—*I know for some of the single female lawyers, who didn’t have children, who didn’t play sport, they were just expected to stay all night [at work] because [it was assumed] they didn’t have anything to go home to.*\(^{174}\)

Where management is not exercised for the many as well as the few, resentments are sure to arise.\(^{175}\) This, in turn, make it more difficult for practitioners to feel they can freely access policies that are on offer, let alone commence a workplace dialogue around the need, or desirability, for policy extensions or other policies.

While this doctoral research did not directly interrogate the types of legal work that might be amenable to part time flexible work practices, many solicitors spoke about what they believed to be possible. As might be expected, notions of part-time or flexible work options varied greatly. I have summarised the views expressed in respect of a range of legal work areas and these are included as Appendix 12 to the thesis. Practitioners working in specific areas, or having a particular knowledge of an area of legal practice, almost always suggested part-time work in that area was readily achievable, while ‘outside’ practitioners were far more negative. The Appendix summarise typical views expressed in interviews about different areas of law and their suitability for the uptake of flexible work practices.

Practitioners, including senior practitioners, who work in various specialised areas of law spoke with real confidence about the ability to incorporate flexible and part-time work, job sharing, and permanent part-time employees, into their practice areas. This raises questions about management’s understanding of the nature of the work, understanding of the nature of a range of flexible workplace options, and more significantly how these might be implemented, monitored and evaluated. Taken as a whole, I argue the interview data also demonstrate the lack of any cohesive understanding or approach across the whole of the solicitors’ branch of the profession. This is not surprising in view of the geographic spread and fragmented nature of the profession, comprised of many individual businesses and an ever-expanding range of legal specialties. But it does emphasise the need for professional leadership across the State from the Queensland Law Society, in line with approaches taken in other States.

\(^{174}\) I(f)46: 25-26.

\(^{175}\) For an example of a reflection of this in the broader community dialogue, see: Smith, Wayne, ‘The birth of resentment – Working mums may do it tough, but it’s the childless who feel aggrieved’, *The Courier-Mail* (Brisbane), 21 January 2002, 9.
Job sharing was of particular interest and concern to research participants. Work on flexibility within legal practice is so advanced in Victoria, for instance, that there is now, as I cited earlier, an official Job Sharing Protocol available for the guidance of practitioners and firms. Some Queensland solicitors were particularly keen to see job sharing operate, but lack of management expertise or experience was often a stumbling block, leading to a reluctance to try or to continue this approach. This principal typified some of the confusion around job sharing practices –

In effect there’s a bit of job sharing goes on anyway with professionals, where we had one on maternity leave, and one standing in, and they were handling the same files ... Perhaps [the difficulty] was our fault. I don’t know ... it’s problematic. [woman – 40s – principal – large regional city firm]

Another lawyer who was broadly supportive of the practice, identified the movement of files and changeover of personnel as problematic, and said I don’t think the firm necessarily handles those transitions very well. Some still saw flexibility in any form limited to women’s family demands, with one man saying that perhaps it comes back to the style of law you practise. Flexibility is generally sought by mums and that may be one of the reasons why women end up working in particular areas [that can be managed part-time].

When client expectations were factored into the mix, many lawyers tended to see that as creating an increased pressure for a full-time workplace presence. There was a strong groundswell of concern and discontent about client pressures, which some practitioners struggled to articulate in a fair and balanced way. Some readily described what they perceived as the inherent client demands within their profession and the difficulty of achieving flexibility in a traditional firm. For some practitioners, it was impossible to contemplate a way of being as a solicitor that was not all consuming. For these solicitors even flexibility to enjoy a holiday was impossible – you’ve always got to be there.

Another lawyer acknowledged the external pressures on practitioners in that: the difficulty that I perceive is client expectation. We have for better or for worse moved into an era of 24/7 service expectation. But, he also sensed a mood of societal change where people are drawing

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176 See: above n 144.
177 I(f)52: 18.
178 I(f)44: 5 [woman – 30s – commercial – city].
179 I(m)72: 9-10 [man – 40s – partner – small city firm]; I(m)35: 8, 9-10 [man – 30s – partner – metropolitan].
180 I(f)43: 9 [woman – 30s – sole principal – regional].
181 I(m)79: 15-16 [man – 50s – former litigation partner – metropolitan] (emphasis his).
a line in the sand. We do have a case of ‘affluenza’ and one of the things we need to do is to say ‘enough is enough’. He was hopeful that flexibility would be implemented at all levels of the profession provided that there was some generational and cultural change at the top so you’ve got an employer flexible enough to actually get their mind around the fact [flexibility] will assist with efficiency.182

This somewhat pessimistic view was in sharp contrast to other practitioners who were enthusiastic about the possibilities. Nevertheless, there was cynicism about either the commitment or skill set of many currently holding senior positions in the profession, and their ability to effect a shift in the prevailing legal culture. This solicitor’s response to the question whether the mainstream profession could offer flexibility was typical: Oh, absolutely. I think they could if they wanted to [laughs]. The problem is not the clients, it’s the bosses.183

Although some ‘bosses’ were already well on board the flexibility train, as this practitioner described: it’s my observation, in management terms, it really pays off. People feel so loyal to the organisation that offers them that kind of flexibility.184 One metropolitan partner in a major firm was clear about the possibilities for flexible work practices at professional level, including the prospects of part-time partners. He saw the profession needing to respond to the fact both men and women were agitating for that shift, while also acknowledging the need to provide for, and manage, risks.185 One woman described highly flexible arrangements in her national firm, but made it clear that these were tied to the particular individuals who headed the discrete section where she worked.186

While some were strongly committed, they were still learning about the best way to implement flexibility. One well-established senior practitioner and principal saw the key as educating the client and offering a team approach: absolutely. I like to sell it to the client that it’s cheaper to ring my assistant. It is a question of educating the client, and making the client feel that they’re getting a better service because they’ve got two or three people looking after

184 I(m)30: 17 [man – 30s – employed solicitor – metropolitan].
185 I(m)36: 21-23 [man – 40s – partner – metropolitan].
186 I(f)45: 3-5 [woman - 40s – specialist area of law – metropolitan].
them.\textsuperscript{187} The team approach she advocated was not a team of lawyers to service a client matter, but well managed use of other lawyers as well as administrative and support staff. Many other practitioners reinforced the need for a team approach in order to ensure flexible work practices could be implemented effectively, especially: \textit{when you’re a very small practice, there has to be a development of a team approach, and the ability for the client’s needs to be met not by just one individual person.}\textsuperscript{188}

A number of lawyers were alive to the need to educate the client, and saw that as a part of a wider shift in community expectations, with a growing understanding within the community of the fact that male professionals within law are wanting some more time with their family. \textit{Clients in the same boat are exercising the same view.}\textsuperscript{189} Another agreed clients were capable of understanding and said it was important to be able to give clients the choice. They described the choice clients faced when working with part-time practitioners this way: “do you want someone who can be devoted to just a few select matters and who is only available two days a week, or do you want someone who is here more often, but has more matters to manage?” We find our clients are quite capable of making this choice sensibly.\textsuperscript{190} Another key element in the flexibility mix was trust, as this woman explained: \textit{I could have worked a four day week, I could have worked a three day week, because there was an enormous level of trust.}\textsuperscript{191}

What exists now throughout Queensland is a patchwork of policies and practices, ranging from highly flexible part time working (predicated on high levels of firm-solicitor trust, practitioner autonomy, and broad based accessibility for a range of other ‘life’ activities), to unrelenting long hours with no possibility of flexibility. Moreover, such a range can also occur within a particular firm, irrespective of what formal policies might be documented. By chance I interviewed some practitioners who came from the same firm and their experiences and perceptions could be very different.

I have referred to practitioners’ perceptions of a long hours culture for its own sake. Some firms seemed deeply committed to the significance of a solicitor’s ‘visibility’ – being

\textsuperscript{187} I(f)39: 18-22, 4 [woman – 50s – partner – regional] (emphasis hers).
\textsuperscript{188} I(f)31: 18 [woman – 30s – partner – metropolitan office of large regional firm] (emphasis hers).
\textsuperscript{189} I(f)40: 6 [woman – 30s – partner – regional – works partly from home].
\textsuperscript{190} I(f)31: 18 [ibid].
\textsuperscript{191} I(f)34: 25 [woman – principal – commercial practice – part time].
physically present for long hours. This seemed a ‘given’, without any exploration of an outcomes based management style, where file movement and fees rendered would be a more effective gauge of employee output and commitment. For others, the flexibility focus was there, but narrowly limited to family needs which in some cases fed into a fear that all women would require time off and that the business would suffer accordingly. As no employer can determine in advance which women, if any, will potentially reduce their professional time commitments in order to meet childcare demands, the criterion that is commonly used is ‘female’. ‘Female is used as a proxy for future workplace disruption and is thus a signal of poor commitment’. One woman articulated the typical misconception around the parenthood and professional mix: [when I became a parent] my employer assumed I would need time off to look after a sick child, but the child’s only ever been sick twice in 13 years. As well as a common theme of the need to educate clients, as well as the profession generally, there was a sense of a need to examine with fresh eyes the traditional ways law has been practised, and to have the courage to try new ways. Some participants were confident the changes would come, albeit a little more slowly than they would like –

You’d think with technology that it should be easier for partners – men or women – to work from home. I think it’s happening, but probably not as quickly as we’d like. [woman – 40s – part-time – national firm] Many practitioners pointed out that the profession could, and did, accommodate what it saw as appropriate within traditional boundaries – such as flexible work arrangements to accommodate long-term training programs for athletes. Some said they would like to hear more from Law Care about the threshold question of whether it is sustainable health wise for practitioners to consistently work beyond ‘standard’ hours.

One practitioner recounted this significant anecdote, which highlights the ability of the traditional firm to accommodate absences, as long as there is the will to do so –

192 Wass, Victoria and McNab, Robert, ‘Pay, promotion and parenthood amongst women solicitors’ (2006) 20 (2) Work, Employment and Society 289, 293. (The offending attribute is seen as ‘sex’ (i.e. female) not even simply ‘parent’.)
193 I(f)53: 21, 22-23 [woman – 40s – employed solicitor – regional]. This practitioner urged firms not to abandon the search for new ways of being lawyers: if you talk enough sense people will listen.
194 I(f)32: 15.
195 One practitioner suggested that as some elite firms could engage a private chef, so too perhaps they could provide some emergency child care scheme that practitioners could access when required to work beyond regular hours to deal with a work emergency or unusually heavy work load.
196 Law Care provides confidential psychological counselling to members of the Queensland Law Society.
[This] middle-aged, male, well-established, partner in Brisbane had a heart attack [and] obviously needed a considerable period off work and then needed a ramping up. [His firm] bent over backwards to help this partner. Of course they would help him. He’d had a heart attack, he was unwell. So they bent over backwards to ensure his clients understood, and to keep his clients happy, and look after his client base while he was away. They bent over backwards to see if they could make arrangements with him working from home in some way, a gradual return to work, working part-time, seeing what his capacity was. And because they had this can do attitude, it wasn’t this big deal and they just made it work. And then, eventually, he came back to work, and they got through it because they all had this attitude, “Of course it can be done”.

As this solicitor emphasised: If [the profession] approached pregnancy and maternity leave with that kind of attitude, it would be a breeze. And a lot of firms do and do find it easy.

It does beg the question as to why a usually planned, and notified well in advance, absence on maternity leave cannot be managed as efficiently and effectively in more legal firms than is presently the case. This is, of course, the question the Commission posed in the Hickie case.\(^{198}\) There will be different considerations for different size firms with different resources, but I suggest this only strengthens the need for a profession wide dialogue about the full range of flexible leave possibilities. At this juncture I will canvass some preliminary human resource management considerations.

### 5.11 BEST PRACTICE 21ST CENTURY

Human resource management has come a long way from the traditional administrative ‘personnel’ function, and is a multi-faceted discipline encompassing a complex and inter-related range of activities from recruitment to retirement. Moreover, ‘contemporary thinking … tends to see it as a more broadly distributed organisational competence, including line managers, rather than just a group of specialists in the h.r. department …’\(^{199}\) This view reflects the approach taken by Australia’s various anti-discrimination Tribunals to the issue of

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\(^{197}\) I(f)73: 19-20 (emphasis hers).

\(^{198}\) See discussion in Chapter 4, Section 4.3 Keeping Their Heads Down, p 4-8. Similarly, legal firms make provision to manage long service leave absences without demur. The particular ‘difficulties’ that family/flexible work arrangements seem to provoke have been reported in other professions as well. For example: management Hoque, Kim and Kirkpatrick, Ian, ‘Non-standard employment in the management and professional workforce’ (2003) 17 (4) Work, Employment and Society 667; accounting Smithson, Janet, Lewis, Suzan, Cooper, Gary and Dyer, Jackie, ‘Flexible working and the gender pay gap in the accountancy profession’ (2004) 18 (1) Work, Employment and Society 115; and engineering Watts, Jacqueline H, “Allowed into a Man’s World” Meanings of Work-Life Balance: Perspectives of Women Civil Engineers as “Minority” Workers in Construction’ (2009) 16 (1) Gender, Work and Organization 37.

vicarious liability for acts of workplace harassment and discrimination whereby ‘[a]n employer must demonstrate that a real commitment to a discrimination-free workplace is embraced and implemented within the organisation and the corporate culture’.200

The application of equal employment opportunity (EEO) principles is seen as fundamental to good management and to the successful implementation of a modern human resource management framework.201 The modern manager is constantly searching for ways the organisation can achieve ‘best practice’ in a particular industry. The legal industry should not be an exception, but rather be prepared to take a leadership role in this regard. Good managers readily shift their thinking from what they must do to what they can do.202 The law sets minimum workplace standards. Minimum standards do not necessarily equate with ‘best’ practice or reflect true professionalism. Professionalism is a contested concept, but the view of it encapsulated by the Minnesota State Bar Association fits well with a management goal of moving beyond the bare minimum required by the law. That Association described professionalism as –

how we should behave even if there are no formal institutional sanctions, while legal ethics rules deal with how we must behave in order to avoid disciplinary sanctions. ... Th[is] distinction... illustrate[s] that conduct which meets the ordinary ethical standards is not the conduct which would be described as professionalism. It is just the minimum standard required’.203

Senior legal practitioners responsible for managing other solicitors and organising work flows in the firm face multiple human resource management dilemmas for which they are ill-equipped to deal effectively and equitably, or at all. The role of managers is changing in line with rapid expansions in technology, practical knowledge, academic research and community and employee expectations. Solicitors are more than likely to have little or no management skills or training, and many are honest enough to say it is a role that does not interest or engage them. Solicitors simply lack expertise in human resource management issues generally, and in the management of workplace equity issues in particular. Yet, in legal firms across the state there is an expectation that they will manage their legal businesses effectively and profitably, and within all legal requirements. Even in the larger firms that are able to

employ trained human resource professionals, many decisions about policy direction are taken in the boardroom by lawyers and not the human resource managers, whose role may be strictly be limited to implementation of predetermined policy directions.  

The case of *Hickie v Hunt & Hunt*\(^\text{205}\) demonstrated the perils of ad hoc and ill thought out policies to accommodate flexible work practices. A West Australian case squarely raised the issue of job sharing and offers some useful guidelines for managers. In *Bogle v Metropolitan Health Service Board*,\(^\text{206}\) Ms Bogle sought to return to work on a job share basis following the adoption of a child.\(^\text{207}\) This proposal was refused by the employer. The Tribunal found that the employer’s main opposition to the job share proposal was that ‘it had been “historically agreed” [it] was not a position that could be job shared.’\(^\text{208}\) The employer gave evidence about ‘convenience’ and ‘costs’, but was unable to substantiate these concerns in any meaningful way. Indeed, the Tribunal had a sense that the employer:

- felt a degree of frustration about the whole situation – the desire to keep a valued senior staff member on the one hand as against a strongly held perception that job-sharing the ... position was simply not practicable, on the other.\(^\text{209}\)

The Tribunal found the requirement she return to work full-time was not reasonable. It said:

- the reaction to the job sharing proposal was a ‘knee-jerk’ one based on historical grounds and an ‘intuitive’ feeling it was unworkable
- the subsequent consideration of the proposal (after the involvement of the complainant’s union) was not an objective review of advantages and disadvantages, but an attempt to justify the [employer’s] initial position
- reasons advanced for rejecting the proposal were ‘vague, ill-considered, superficial and had no objective basis’
- a genuine analysis of the proposal would have led to the conclusion that the proposal had considerable advantages which may well (and probably would) have outweighed the disadvantages\(^\text{210}\)

\(^{204}\) See: the example of human resources staff being aware of a solicitor working well beyond the standard hours, but taking no action, above n 27.

\(^{205}\) See: above n 198.

\(^{206}\) (2000) ¶EOC 93-069.

\(^{207}\) She was a highly qualified dental nurse in a key supervisory position and her work was highly regarded.

\(^{208}\) Ibid, 74,213.

\(^{209}\) Ibid, 74,204.

\(^{210}\) Ibid, 74,226-74,227. Nor did Courts and Tribunals find it easy to deal with issues of flexibility in the case of *Schou v State of Victoria* where Ms Schou sought computing support (installation of a modem) to enable her to work from home on two days a week to accommodate care of an ill child. (These issues may now be overcome by Victorian legislation which imposes a positive duty on employers to try to accommodate requests for flexible work practices.) See: Butler, Jennet, ‘Who’s in charge?’ (2002) December *HR Monthly* 28. On issues of constructive dismissal on return from maternity leave and the dangers for an employer of discounting pre-maternity leave management experience – see: *Rispoli v Merck Sharpe & Dhome and Ors* [2003] FMCA 160.
The Tribunal also considered the relevant legislative requirement that the condition complained of (i.e. the return to full time work) must be something with which the complainant ‘cannot or does not comply’. This is not an issue of mere physical capacity to comply, but compliance in a more meaningful sense having regard to the individual’s situation and all the circumstances of the case. Ms Bogle, in fact, did return full time, but it ‘proved difficult, stressful and unsustainable’.211

At the close of the 20th century, at least one commentator felt unable to see a time when women would be on equal footing with their male counterparts, but did concede that some women would succeed – either for organisational reasons or personal reasons (i.e. financial resources to purchase support services such as child care; understanding and ‘egalitarian’ spouses; and/or ‘superwoman’ energies, drive and effort). In the former (organisational) scenarios, Burke saw some organisations being prepared to create work environments where women with children would not be disadvantaged. He considered that –

They will do this by legitimising a wide variety of career paths and options, offering the necessary flexibility at particular points in women’s careers to assist their juggling of work and child care … accept responsible and reasonable commitment by both women and men … and seriously examine the time demands of work and how these may be rethought … to facilitate women’s career advancement and organizational performance.212

Subsequently Burke argued flexibility was a key organisational issue, not simply a ‘woman’s issue’. He said ‘[w]here such organizational values were present, managerial and professional men reported greater satisfaction inside and outside of work, generally higher life satisfaction and more positive emotional and physical well being’.213 The policies and practices that perpetuate traditional ways of working as solicitors (especially as regards long and often open-ended hours) create systemic and structural barriers to success within the legal profession, especially, but not just, for women. As one woman wrote on her survey instrument: The excitement of the job, status, and income are appealing, but the long hours and toll on relationships counterbalance this. Some refer to it as the Golden Handcuffs.214

But, are the long hours ‘set in stone’? It was evident during my research that some firms,

211 (2000) ¶EOC 93-069, 74, 227. (The equivalent Queensland provision ‘does not or is not able to comply’ is contained in Section 11(1)(a) Anti-Discrimination Act 1991 (Qld).)
212 Burke, above n 76, 163.
213 Burke, above n 83, 85. He surveyed nearly 300 managerial and professional men, and considered responses to a range of issues in situations where men were reporting organisational values that supported the concept of work life balance.
214 S(f)78 at Survey Q9 Why do you continue to be a lawyer?
some sections, some individual practitioners, are not working in that way. There seems to be
few in managerial roles who have the vision and skills demonstrated by one solicitor, who
was a partner (commercial and banking) in a high profile city firm. He was passionate about
the need to retain talent within the profession, to create a sustainable healthy lifestyle, and to
maintain the successful and profitable business model he had established. His thoughtful and
thought provoking comments serve as a useful touchstone in any wider debate. He was
committed to his preferred work model, which required practitioners to work reasonable
hours, and to have after hours and weekends devoted to other interests and pursuits. If work
demand built up he employed other lawyers. He rejected a claim by his own partners for
‘24/7 availability’ and was determined to avoid unrealistic client expectations.215

This solicitor’s progressive approach and clarity of direction speaks to the ‘courage and
innovation’ former solicitor, now Federal Sex Discrimination Commissioner, Elizabeth
Broderick has referred to when urging the need to create organisational change at a cultural,
rather than a superficial, level.216 Broderick still sees women as driving ‘innovation of
[flexible] work practices’ out of the necessity to meet their roles within families, but
emphasises that men will also reap the benefits of a more flexible regime.217 Hers is a voice of
credibility within the private legal profession, where Broderick worked for many years (both
in the United Kingdom and Australia), leaving behind a suite of ‘family friendly’ policies in
the Sydney office of her national firm. More recently, she went further, describing the current
traditional business model in big law firms as ‘broken’ and outdated as it has been ‘built
around the needs of male baby boomers’.218

I suggest that some Queensland legal firms are getting the balance right, but large numbers of
solicitors see their professional lives as seriously adversely affected by a range of stressors
and pressures – matters they have traditionally been most reluctant to air publicly, either
individually or collectively. Despite areas of innovation, solicitors continue to describe
outdated cultures of long hours and workplace policies that may only serve as ‘window
dressing’. This is also within the context of a culture (described in Chapters 3 and 4) of

215 I(m)36: 11-14, 37 [man – 40s – partner – metropolitan]. His thoughtful approach, the success of which was
apparent in the development and expansion of his work unit, was outstanding and I have included details of his
views in Appendix 13.
216 Wilson, Lauren, ‘Sex bias chief says 9-5 doesn’t really work’, The Australian (Sydney), 20 August 2007, 8.
217 Ibid.
privileging of traditional male networks through clubs and sporting activities, and excluding those who may be different. These complex and interrelated issues speak to a need for real management expertise being brought to bear in any ongoing or future Queensland debate.

5.12 CONCLUSION
I will return to many of the themes in this Chapter at the conclusion of the thesis, and in particular the key role that human resource management needs to play in the search for more flexible, equitable and healthy legal workplaces. Alternative career paths have been utilised in some areas of the profession to accommodate those opting out of the profession or opting to work part-time around child bearing and rearing. But, there is a sustained conviction that these pathways may only be a means of ‘parking’ women away from the letterhead and out of contention for mainstream advancement. This has, in turn, generated a belief that parenthood and partnership are incompatible, particularly for women. My research discloses an ongoing reluctance to ‘go public’ with concerns or complaints in a professional climate that lacks any widespread or coherent work life balance philosophy and demonstrates only occasional commitment to genuinely accessible flexible work practices.

More than half of surveyed Queensland practitioners reported being affected by the pressures of their legal practice in a professional culture that is largely synonymous with long and erratic hours. Office ‘visibility’ is conflated with commitment. Professional service to the client is equated to client expectations, without any regard for how reasonable or necessary those expectations might be. Few practitioners, at any level of the profession, see how the perceived needs of the client can be challenged, or how the traditional ways for meeting those needs can be altered.

While men were more likely than women to say that stress was not an issue, it is clear large sections of the private profession are struggling. The earlier statistical findings were strongly supported by anecdotes recounted by interviewees in 2005 and 2006. In the context of the current structure of legal work, it is not a problem that is likely to disappear. Many do employ coping strategies, but others report that the present requirements of the professional and private spheres leave little or no time for healthy non-work activities. For some, work itself consumes all available time.
In the broader community, there are myriad workplace policies and practices around flexibility, but many of these are absent or poorly understood within the solicitors’ branch of the legal profession. Queensland solicitors operate from numerous individual workplaces, and individual cells or sections within larger firms, under a range of ad hoc policies. Moreover, where policies do exist, many practitioners report they are unable or unwilling to access them for fear of adverse consequences in terms of ultimate career advancement. These fears may be well founded as recent research suggests that part-time work results in reduced responsibilities, less access to high status roles and projects, lack of promotional opportunities, increased work intensity, and poor workplace support.\(^{219}\)

There is an overwhelming message that lawyers ‘want a life’, but an equal lack of certainty about how to proceed. This is an important time in the history of the Queensland profession for the Law Society to give a lead in a wide-ranging and constructive debate about all solicitors’ ways of working. The need for flexibility in order to include, and privilege, family life is critical to most solicitors’ ideas about success and their commitment to remain within the private profession on a long term basis.

The next Chapter examines success and the many faceted elements that build a success framework for Queensland solicitors. Family is central for many practitioners, both women and men. An understanding of what success means for these solicitors only reinforces the urgency for the profession to engage with the flexibility debate in meaningful and innovative ways to allow all practitioners an equal opportunity to achieve their professional goals.

\(^{219}\) McDonald, Bradley and Brown, above n 79.
# CHAPTER 6. NOTHING SUCCEEDS LIKE …

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CHAPTER 6. NOTHING SUCCEEDS LIKE …

‘Success in the law traditionally has been measured by money, title and prestige’.
>Tucker and Niedzielko, 1994

*I decided I didn’t want to be a lawyer if I had to be an arsehole.*
>woman – 50s – sole practitioner

6.1 INTRODUCTION

As I have outlined, this thesis focuses on three key research areas – discrimination, flexibility and success. This Chapter explores the third of these, the concept of success. Within the broader context of the thesis, an exploration of success underlines the reality that women’s experiences of legal practice as solicitors in Queensland continue to be more problematic than those of their brothers-in-law.

Specifically, this Chapter examines notions of success and how the solicitors who participated in the Queensland research identify and define success in their personal and legal lives. From the literature, success emerges as a contested and problematic notion, having both extrinsic and intrinsic aspects. Whether considered in its ordinary usage, or through the eyes of various writers and commentators, or through the varied understandings of the solicitors who participated in the research, ‘success’ does not admit of simple definitions, interpretations or emphases. The Chapter draws on the survey data for an appreciation of whether Queensland solicitors see themselves as ‘successful’, and explores what solicitors mean when they use the term ‘success’.

The Chapter views the concept of success through both subjective and objective criteria used by the solicitors themselves. It asks whether an understanding of success may shift, consciously or unconsciously, to accommodate or circumvent obstacles and barriers to achievement. It canvasses the key characteristics considered by solicitors to best represent success.

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2 1(f)39: 18 (interview conducted 2005).
The Chapter then focuses on the range of individual skills and capabilities that solicitors nominated as vital for a ‘good lawyer’. In this context, the interview material adds further nuances of meaning to the emerging picture of success built up through the survey stage. The Chapter identifies ways in which the solicitor-identified elements of success can be usefully grouped. It considers clusters of skills gleaned through the interview phase in terms of their ‘fit’ into the personal and professional spheres in which practitioners operate. The various strands of the success blend are drawn together to construct a diagrammatic framework of success for Queensland solicitors. The framework demonstrates that Queensland solicitors have a complex consciousness of ‘success’ with internal and external factors operating at every level. The analysis acknowledges that the boundaries between spheres, or within groupings of skills and characteristics, are not rigid, but that these remain fluid and shifting.

This Chapter asks what differences exist between women and men in their personal understandings of success, and explores whether women and men value similar career markers and milestones. It also examines whether the prospect of being admitted to partnership in a solicitors’ firm continues to be seen as the pinnacle of private practice success.

The focus then turns to individual solicitors’ perceptions about whether or not they have equal access with their peers and colleagues to a range of workplace opportunities and rewards, including: remuneration, promotion, training and development, and networking. While impediments to success have been a general theme throughout the thesis, this Chapter highlights the issue of self-confidence as a potential barrier for women, as well as canvassing other issues that affect women’s ability to achieve.

The Chapter builds on the material from Chapter 5 around work life balance and argues that many solicitors who continue to work as private practitioners are critical of the way their profession requires them to work to achieve success. I suggest this dissatisfaction is pushing the profession towards major change, both in terms of how its practitioners may view success and in terms of how the profession operates on a day-to-day basis. I argue that this shift will require the profession to engage, both individually and collectively, with modern management concepts and skills to meet future challenges. The Chapter highlights the apparent lack of importance solicitors place on management skills, particularly human resource management, and foreshadows this as a significant issue to be revisited in the concluding Chapter.
In the next Section, I consider some illustrations of the various ways solicitors think about success and I place this within the context of relevant literature.

6.2 A CONTESTED NOTION

Researchers have observed ‘success seems to be in the process of redefinition …’\(^3\) at least for some of the younger lawyers who participated in a Victorian study. It was therefore not surprising to find shifts in emphasis and understanding, as well as a range of views, among Queensland solicitors.

One American report\(^4\) recognised the inherent complexities of ‘success’ and recommended further research to explore possible definitions of this contested and problematic notion. Importantly, the report authors acknowledged some women may not ‘value the traditional paradigms of success’. This, in turn, may mean these women will report a more positive personal career evaluation than would otherwise be the case. I suggest this is because women have different, some would say ‘lower’, career expectations than their male counterparts.\(^5\) The American report acknowledged the possibility some women make other career choices, and value other goals, because they know that the traditional male pathways to career success will be closed to them. The report authors stressed the critical need to distinguish situations where women have different goals and where they choose different goals because they believe the mainstream options will not be available to them.\(^6\)

The traditional stereotype of women as homemakers and men as breadwinners has been widely canvassed in organisational and management literature; but a caution has issued against an unquestioning acceptance of a ‘new’ stereotype that ‘portrays women and men as having similar career patterns’.\(^7\) Many of our theories of career development ‘have been

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\(^4\) Tucker and Neidzielko, above n 1. The report examined options and obstacles in the careers of women lawyers.
\(^6\) Tucker and Neidzielko, n 1, 5.
derived from observations of men’, and, because comparisons were seldom made, this has led to speculative rather than factual conclusions about women’s and men’s career patterns.

Certainly, there was no uniform perspective on success articulated by Queensland solicitors during interviews. The following extracts represent the numerous views of solicitors who saw career patterns as very different for women and men –

For women it’s a balanced lifestyle with a fulfilling job. And I think for men it is much more a hierarchical structure.
[woman – 50s – various senior roles in private practice and government]

The archetypal male perspective is: you make it to partner, you earn big bucks, you have the kudos that goes with being at that level. Women tend to think a little bit differently – financially, a comfortable level, enjoy their work, and also have a balance of a home life …
[woman – 30s – employed solicitor – metropolitan]

For some [women] being a partner I don’t think is seen as important. I think for some they think it would be too much pressure, particularly if they’ve got families at home, and kids’ sports days to go to.
[man – 50s – partner – national firm]

These practitioners drew gender lines, but others claimed women and men sought the same goals. I suggest that it is generally unhelpful for representatives of the legal profession to assert that women have different priorities and make different choices in their legal careers without striving for some understanding of why those priorities may be different and why those choices may be made. For some women, the suggestion they wanted different career pathways from men was unacceptable –

My friends wanted promotion and good files. I didn’t see any difference between the men and the women I worked with. I didn’t meet women who were, as solicitors, particularly interested in being at the margins. They wanted to be in the main game.
[woman – 50s – former private practice – now senior government lawyer]

Even within our daily lexicon, the notion of ‘success’ is multi-layered: the outcome of an event, a result; fortune in a particular situation, good or bad luck; achievement of an

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8 Ibid.
9 Ibid. The authors argue for the significance of comparative data in researching women and men in organisations. For a survey of theories of career development for men and for women (and some of the stereotypes that underpin them) see: 189-196.
10 I(f)71: 1.
11 I(f)76: 1. Also: I(m)75: 1 [man – 40s – sole practitioner – senior roles in profession].
12 I(m)78: 4.
13 I(f)77: 2, 3.
endeavour, attainment of a desired end, prosperity.\textsuperscript{14} It may well be about money, title and prestige in a chosen profession, but it may also be about helping others and a sense of personal satisfaction at a job well done. It is not necessarily a static concept during the course of a life or career.\textsuperscript{15} What one individual defines as success may evolve gradually over time or shift suddenly when new factors come into play. For some, the idea of success will be bound up with setting priorities and choosing strategies, as this solicitor explained –

\begin{quote}
I would most definitely say that they are different strategies for men and women because of the priorities that we have. Family is not something that would have been in my strategies 10 years ago. So that has set me on a completely different path work-wise.
\end{quote}

[woman – 30s – former associate – regional]\textsuperscript{16}

The successful solicitor will often be seen as a leader. This may be as a generally acknowledged leader in the wider profession, as a leader (principal/partner) of the firm, as a leader by virtue of experience and years of practice and/or specialist skills, or perhaps as a leader, or powerbroker, by virtue of their far reaching contacts and networks. A Canadian study of women and leadership in law found the research participants tended to use the terms ‘leadership’ and ‘success’ interchangeably.\textsuperscript{17} Judy Wajcman has argued strongly that a trait such as leadership cannot simply be reduced to an individual level, but is more properly viewed as ‘a structural asset that is exercised through a social network and is dependent upon the accounts and responses of those who assess the [actor] in particular situations’.\textsuperscript{18} I will return to the significance of contextual and structural constraints later in this Chapter.

One interviewee considered the traditional external trappings of success, and described a group of senior lawyers (partners) in her workplace this way –

\begin{quote}
Success is partnership – more pay – a lot of them really cared about nothing Else. [They are] so driven by this notion of commercial success. They've all got very expensive cars, they all live in very expensive homes. They have discussions about whether or not the Mercedes or the BMW is the better motor vehicle ...
\end{quote}

[woman – metropolitan : describing male partners]\textsuperscript{19}

\begin{small}
\begin{itemize}
\item \textsuperscript{14} Brown, Lesley (ed), \textit{The New Shorter Oxford English Dictionary} (1993) vol 2, 3128.
\item \textsuperscript{15} For a discussion of shifting career patterns for women see: O'Neil, Deborah A and Bilimoria, Diana, ‘Women’s career development phases - Idealism, endurance and re-invention’ (2005) 10 (3) \textit{Career Development International} 268.
\item \textsuperscript{16} I(f)80: 1
\item \textsuperscript{17} Hatfield, Jennifer, \textit{Women and Leadership in the Profession of Law: A Discursive Approach} (Thesis. Department of Psychology, University of Calgary, Alberta, 2000) 168.
\item \textsuperscript{18} Wajcman, Judy, \textit{Managing like a Man – Women and Men in Corporate Management} (1999) 62.
\item \textsuperscript{19} I(f)73: 3 (emphasis hers).
\end{itemize}
\end{small}
Career success has been typically measured by what have been regarded as ‘objective’ criteria (e.g. salary, title, position) – visible trappings within the organisational hierarchy. Some commentators suggest that success should also be measured by ‘subjective’ variables (e.g. job satisfaction), positing that women focus on notions of how they feel about their careers, rather than how their careers might actually appear. One woman reflected the significance of both objective and subjective facets when she said –

*Success would be having the respect of my peers, the partners I work with, the barristers. I don’t necessarily need to have reached the pinnacle of partnership. I [have been promoted to a special title] in recognition of my skills. A good salary would tend to bear upon what I would regard as being successful. It’s not as important as the other things I don’t think. Provided you’re good at your job and you achieve good results and the people around you think that – I think that’s the true measure of success.*

[woman – 40s – senior position – national firm]  

Others kept their view of success firmly focussed on the ability to ensure flexibility and the inclusion of individual family responsibilities and/or other interests. The following interview extract was typical –

*Success for me is not being a partner in a big law firm. Success for me is having a balance between family and career. I enjoy the fact that I have a profession. I enjoy the fact that I have an interesting job. But for me to work full-time would mean the family would suffer. I think I’ve sort of got the best of both worlds.*

[woman – 40s – specialist part-time – metropolitan]  

This woman was also aware of the inherent conflict because there is: a bit of a feeling you’re not a real lawyer because you’re only working part-time, and you’re not really on that partnership trail.  

As this woman highlighted, some women lawyers apparently focus on the success that they can achieve within career trajectories that allow them to also privilege family needs and responsibilities, and yet remain acutely aware that other judgements may be at play.

Although women were not alone in stressing the importance of family, their role, almost

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20 Refer: work done in the 1980s in New South Wales by Roman Tomasic, where he found autonomy (independence and control) and stimulating work (quality files) and the prospect of above average income were key drivers for entering law. Tomasic, Roman, ‘Social Organisation Amongst Australian Lawyers’ (1983) 19 (3) *Australian & New Zealand Journal of Sociology* 452.
21 Powell and Mainiero, above n 7, 197-199.
22 (f)37: 1.
23 (f)45: 1, 2-3 (emphasis hers).
24 (f)45: 8 (emphasis hers).
25 Also see: (f)80: 2 [woman – 30s – former associate – now government – regional] (emphasis hers).
always in this research as the principal caregivers, meant they were more likely to be negotiating a more complex career and success pathway. One male partner, a parent, who headed a dynamic and growing commercial unit within a major metropolitan firm was striking in his privileging of family in his life –

*I say to my staff if the price of my success at [this firm] is that I miss out on [my young children] then it’s too great a price to pay – and I will consider this partnership a failed experiment.*

This solicitor readily conceded the fact his wife had chosen to stay at home had been a major contributor to his success within his firm: *I couldn’t do it on my own – I wouldn’t have my business where it is today but for the fact she’s doing for us what she’s doing.*

While they acknowledged the reality for many women of trying to balance success in careers and success in relationships, Gary Powell and Lisa Mainiero did not generally see men as having the same imperatives in relationships. In their careful efforts to break from past stereotyping in discussing success, the authors themselves have adopted an (unconscious perhaps, but nonetheless powerful) oppositional binary image where they see women navigating a career along the ‘river of time’, sometimes focussed on career, sometimes on relationships. The career currents push women to the upper bank, while concerns for others/families/relationships push them towards the lower bank.

I suggest that the authors’ image of women taking a ‘more holistic approach to their lives than men’ implies a control and an agency that ignores the possibility that choice may be illusory, and that when career decisions must be made, it is often a ‘no choice’ choice as to whether women will end up standing on the upper or the lower bank. In contrast, Cynthia Epstein urged us to examine whether the progress of women lawyers was blocked by a ‘fixed ceiling’ or ‘whether the route to success is open but rarely chosen by them’. Both of these possibilities were acknowledged during the research, as these women explained –

26 I(m)36: 11.

27 I(m)36: 29. Also see: I(m)41: 2 [man – 30s – property lawyer – regional].

28 Powell and Mainiero, above n 7, 199. They do argue men’s careers can be described using the same ‘non-traditional’ model they have developed and that ‘not all men’ are exclusively career driven (also 209).


30 Powell and Mainiero, above n 7, 199.

31 Ibid, 203.

You’ve got 80 percent of the people at the top are blokes, and most of the business is done at the Gabba, or the Brisbane Club, or Cha Cha Char, in terms of working out the direction of a firm. Success is a man. [Women] are invisible in those sort of settings. My firm is looked at as being gender equal, but I see most of the decisions are made behind closed doors by a male approach.

[woman – 50s – senior litigator – metropolitan] 33

There’s not as many women at senior level. I don’t think it is only because they’re not given the opportunities. It must be because people that are given the opportunities decide for various reasons they don’t want to be in that environment. Some people have been let through the glass ceiling and decided to jump back down.

[woman – 30s – refused offer of a partnership – metropolitan] 34

A decade before Epstein, Maria Markus expressed concern that success might be seen as simply ‘raising’ women to a level that was defined, and hence controlled, by men. She reminds us ‘it has proved simpler – though not simple … for women to begin travelling traditional (male) routes than to change those routes’.35

No single definition of success will assist us to appreciate fully how solicitors might view this concept at various points in their life and career journeys. The notion of success exists within a framework of complexity and shifting meaning. As the next Sections demonstrate, Queensland solicitors embrace a multiplicity of what might be classified as public and private factors in defining their own views of success.

6.3 HOW THE SOLICITORS SEE IT

Without providing the research participants with any specific definition or model of success for comment, I asked Queensland solicitors in the survey whether they saw themselves as successful.36 I also asked them to identify characteristics that best identified success for them. Those solicitors who participated in the interview phase of the research also spoke at length

33 If(f)38: 1-2, 7 [former high-profile career in another profession before law]. The Gabba is a reference to corporate boxes at the Brisbane cricket ground; the Brisbane Club is a club frequently used as a meeting place by capital city (usually male) lawyers, although unlike Tattersalls Club, it no longer excludes women (admitting them as members in 1998); and Cha Cha Char is a restaurant much used by members of the legal profession for meeting and entertaining at the time of writing.

34 If(f)73: 25 (emphases hers).


36 Survey Q22 Do you see yourself as successful?
about success and what it meant for them as individuals.\(^{37}\)

In responding to a question as to whether or not they saw themselves as successful, some three quarters of the participants answered in the affirmative, as the following Table 6.1 shows. When responding to this question, 74.29 percent of women and 82.80 percent of men said that they did see themselves as successful.\(^{38}\)

### Table 6.1: Q22 – Individual view of success

<table>
<thead>
<tr>
<th>Q22 – Successful?</th>
<th>FEMALE</th>
<th></th>
<th>MALE</th>
<th></th>
</tr>
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<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>78</td>
<td>74.29</td>
<td>77</td>
<td>82.80</td>
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<td>No</td>
<td>27</td>
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<tr>
<td>Total</td>
<td>105</td>
<td>100.00</td>
<td>93</td>
<td>100.00</td>
</tr>
</tbody>
</table>

One finding that emerged when the survey results were interrogated further was that female principals, when asked whether they saw themselves as successful, were less likely to answer affirmatively when compared to female employees.\(^{39}\) In the context of my research, I suggest this again raises the question of women’s confidence in, and appreciation of, their own abilities. Some women openly raised issues of self-confidence in the interview phase of the research. Whether they personally feared, or avoided, success; or whether they were simply acknowledging a perceived inability to achieve traditional success is perhaps impossible (for researcher or participant) to ascertain. I will revisit this issue later in this Chapter.\(^{40}\)

Notwithstanding a majority of clear responses that solicitors saw themselves as successful, the question remains: what do Queensland solicitors mean when they say they see themselves as successful? Whether or not they considered themselves personally to be successful, survey

\(^{37}\) Interview transcripts yielded more than 90 pages directly related to success and a further 110 pages on partnership, as well as considerable material on related areas such as mentoring, billable hours, family responsibilities, work life balance.

\(^{38}\) There was no statistically significant difference between women and men in their responses. The response to this question was broadly based, with no differences for either women or men in the profession when examined against their age, the number of lawyers in their individual workplaces, their practice location, whether or not they had a professional parent, or had had private schooling, whether they had had a prior career, whether they were undertaking further studies, or whether they had children.

\(^{39}\) Female: principal/partner N=18, 72%; employed solicitor N=60, 75%; p=0.765. Men who held principal/partnership roles were more likely than their employed male colleagues to see themselves as successful. (Male: principal/partner N=48, 88.89%; employed solicitor N=29, 74.36%; p=0.067). These results are significant in furthering our understanding of the issues, but are ‘non-significant’ (on chi-square tests) in strict statistical terms.

\(^{40}\) See: Section 6.10 A Matter of Confidence and Other Obstacles, p 6-36.
participants were asked to consider 21 characteristics and to indicate those they believed best define success in a lawyer. The following Table 6.2 shows the characteristics that were listed. The participants were asked to rank these in order of importance or significance to them. For each characteristic, the Table details the number and percentage of respondents who ranked a particular characteristic in their ‘top five’. (Participants were invited to rank more than five items if they wished to do so, and quite a number chose to do this.)

The five ‘most popular’ characteristics for women and for men differ slightly. The ‘order’ columns included in the Table provide a ready indicator of the most popular inclusions in the ‘top five’ for women and for men (e.g. 75 percent of women ranked ‘respect’ in their top five – shown as the number 1 characteristic in the relevant order column; 60 percent ranked ‘honest’ in their top five – shown as number 2 in the order column for women; and so on).

Table 6.2: Q21 – Characteristics that best define success

<table>
<thead>
<tr>
<th>Q21 - Characteristics</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Respected by peers/clients/public</td>
<td>81</td>
<td>75.00</td>
</tr>
<tr>
<td>Honest</td>
<td>65</td>
<td>60.19</td>
</tr>
<tr>
<td>Healthy, happy lifestyle</td>
<td>62</td>
<td>57.41</td>
</tr>
<tr>
<td>Strict ethical standards</td>
<td>52</td>
<td>48.15</td>
</tr>
<tr>
<td>Achieves personal goals</td>
<td>51</td>
<td>47.22</td>
</tr>
<tr>
<td>Works cooperatively with others</td>
<td>45</td>
<td>41.67</td>
</tr>
<tr>
<td>Hard working</td>
<td>44</td>
<td>40.74</td>
</tr>
<tr>
<td>Meaningful personal relationships</td>
<td>36</td>
<td>33.33</td>
</tr>
<tr>
<td>Open to change/new experiences</td>
<td>33</td>
<td>30.56</td>
</tr>
<tr>
<td>High fee earner/high income</td>
<td>29</td>
<td>26.85</td>
</tr>
<tr>
<td>Community status/influence</td>
<td>26</td>
<td>24.07</td>
</tr>
<tr>
<td>Assist less privileged</td>
<td>17</td>
<td>15.74</td>
</tr>
<tr>
<td>High profile clients</td>
<td>13</td>
<td>12.04</td>
</tr>
<tr>
<td>Working for particular firm</td>
<td>13</td>
<td>12.04</td>
</tr>
<tr>
<td>Competitive</td>
<td>11</td>
<td>10.19</td>
</tr>
<tr>
<td>Ambitious</td>
<td>10</td>
<td>9.26</td>
</tr>
<tr>
<td>High academic achievement</td>
<td>8</td>
<td>7.41</td>
</tr>
<tr>
<td>Name on letterhead</td>
<td>8</td>
<td>7.41</td>
</tr>
<tr>
<td>Has prestige car, home</td>
<td>7</td>
<td>6.48</td>
</tr>
<tr>
<td>Family connections</td>
<td>2</td>
<td>1.85</td>
</tr>
</tbody>
</table>

41 Survey Q21 Whether or not you would describe yourself as ‘successful’ what do you think are the characteristics that best define success?
Based on the sex of survey participants, there were two significant differences in how women and men viewed success, and these have been highlighted in bold in the Table. Women were significantly more likely than men to rank ‘working co-operatively with others’ and being ‘open to change/new experiences’ as important in their notion of success. I will look at these characteristics more fully later in this Chapter.

There was provision for research participants to list other characteristics they saw as important. Some participants did so. The additional nominated characteristics fell into three broad groupings around the foci of the client, the firm, and the individual practitioner. These are set out in Table 6.3 below. Some of these are specifically captured by another of the survey questions and are reviewed later this Chapter. All of these ‘additional’ items are incorporated in some form in the success framework presented later in this Chapter.

### Table 6.3: Q21 - Additional success characteristics

<table>
<thead>
<tr>
<th>Q21 – Additional success characteristics nominated by participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client focus</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Firm Focus</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Individual Focus</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

Essentially, Queensland solicitors see themselves as successful if they have the respect of their peers, their clients and the public, if they maintain honesty and strict ethical standards,

---

42 Chi square ($\chi^2$) = 4.111 df=1 p=0.043
43 $\chi^2$ = 4.832 df=1 p=0.028
44 See: Section 6.6 Points of Difference and Connection, p 6-19.
46 See: Section 6.5 A Success Framework, p 6-15.
and if they lead healthy and happy lifestyles, while still being hard working and achieving their personal goals. The factors selected by Queensland practitioners stand in strong contrast to the ‘priority of profit’ and its associated quest for money, luxury lifestyles, and ‘positional goods’ identified in some American studies.\(^{47}\) The broad agreement on characteristics of success sits well with the view that success had no sex.\(^{48}\)

For clarity, I have presented the five characteristics both women and men ranked most frequently in their ‘top five’ in Graph 6.1 below.\(^{49}\) There were no statistically significant differences between the responses of women and men in relation to these key characteristics.

**Graph 6.1: Q21 – Characteristics that best define success**

![Graph 6.1](image)

This uniformity of views of female and male solicitors relates to a cluster of characteristics that I suggest can be fairly readily internalised and ‘adapted’ by an individual to fit their own particular circumstances. They are not characteristics that are always capable of objective measurement, or that are necessarily played out or experienced in a comparative, or

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\(^{48}\) See: discussion in Krueger, David W, *Success and the Fear of Success in Women – a Developmental and Psychodynamic Perspective* (1993), 12 where he points out that it has been difficult for society to accept that there is no inherent masculinity in medicine, business or law, nor a required absence of femininity in ambition and achievement and success. (The terms ‘masculinity’ and ‘femininity’ are as used by Krueger.)

\(^{49}\) As the earlier *Table 6.2: Q21 – Characteristics that best define success*, p 6-10, showed, the slight differences in women’s and men’s rankings brings a total of six characteristics to the forefront.
competitive, arena. I will examine shortly how this shared understanding and experience of success stands up against the structural realities of the Queensland legal workplace. I suggest that it is these structural realities that create some of the different articulations of success outlined earlier.\textsuperscript{50}

I also considered these key characteristics against the various demographic data\textsuperscript{51} collected in the survey, and these findings are set out fully in Appendix 14, where I look at these characteristics in more detail as well as in the context of the interviews.

Some of the success characteristics, particularly in respect of achievement of personal goals and a balanced lifestyle, were considered more fully in Chapter 5. At this juncture, I will draw in some of the specific personal skills and attributes that solicitors considered were essential to being ‘a good lawyer’. These add further and more detailed dimensions to understanding solicitors’ concepts of success.

6.4 INDIVIDUAL SKILLS & INDIVIDUAL VOICES

Individual perceptions of success were approached from another angle in the survey, when participants were asked\textsuperscript{52} what particular attributes were needed for recognition by peers, clients, and the public as ‘a good lawyer’. This gave practitioners an opportunity to consider a range of individual skills and capabilities. In a parallel fashion to the survey question about characteristics of success, a list of attributes was provided and participants were invited to rank in order of significance (1 being the most significant) those they saw as the most important traits.

Table 6.4 that follows sets out the numbers and percentages of women and men who ranked a particular item in their ‘top five’. There are some differences between women and men. The ‘order’ columns included in the Table indicate the ‘most popular’ attributes to be selected in the ‘top five’ (e.g. 63 percent of women ranked ‘strong communication skills’ in their ‘top

\textsuperscript{50} See: Section 6.2 A Contested Notion, p 6-3.

\textsuperscript{51} Survey Q2 (age), Q3 (number of lawyers – workplace size), Q4 (postcode – split as to metropolitan or regional), Q5 (position in firm e.g. partner or employee and year of admission – seniority), Q6 (whether professional parent, private schooling, a prior career, or undertaking current studies), Q7 (children).

\textsuperscript{52} Survey Q19 In your opinion what particular attributes are needed for recognition (by peers, clients, public) as a good lawyer?
five’ – shown as number 1 in the relevant order column; 55 percent of women ranked ‘common sense’ in their top five – shown as number 2 in the order column; and so on).

There were two attributes where there was a statistically significant difference between women and men, and only one of these was ranked in participants’ ‘top ten’. Both attributes are highlighted in bold in the Table. These two attributes, as well as the play of any demographic factors are set out more fully in Appendix 15.

Table 6.4: Q19 - Attributes needed for recognition as a good lawyer

<table>
<thead>
<tr>
<th>Q19 – Attributes for recognition as good lawyer</th>
<th>FEMALES</th>
<th>MALES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong communication skills</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>69</td>
<td>50</td>
</tr>
<tr>
<td>%</td>
<td>63.30</td>
<td>52.08</td>
</tr>
<tr>
<td>Order</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Plenty of common sense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>60</td>
<td>53</td>
</tr>
<tr>
<td>%</td>
<td>55.05</td>
<td>55.21</td>
</tr>
<tr>
<td>Order</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Logical thought/clear expression</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>58</td>
<td>36</td>
</tr>
<tr>
<td>%</td>
<td>53.21</td>
<td>37.50</td>
</tr>
<tr>
<td>Order</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Creative problem solver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>49</td>
<td>45</td>
</tr>
<tr>
<td>%</td>
<td>44.95</td>
<td>46.88</td>
</tr>
<tr>
<td>Order</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Practical/adaptable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>48</td>
<td>38</td>
</tr>
<tr>
<td>%</td>
<td>44.04</td>
<td>39.58</td>
</tr>
<tr>
<td>Order</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Good memory/attention to detail</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>44</td>
<td>37</td>
</tr>
<tr>
<td>%</td>
<td>40.37</td>
<td>38.54</td>
</tr>
<tr>
<td>Order</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Good interpersonal relationships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>42</td>
<td>43</td>
</tr>
<tr>
<td>%</td>
<td>38.53</td>
<td>44.79</td>
</tr>
<tr>
<td>Order</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>High ethical standards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>40</td>
<td>46</td>
</tr>
<tr>
<td>%</td>
<td>36.70</td>
<td>47.92</td>
</tr>
<tr>
<td>Order</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>High intellectual ability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>38</td>
<td>36</td>
</tr>
<tr>
<td>%</td>
<td>34.86</td>
<td>37.50</td>
</tr>
<tr>
<td>Order</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Effective management skills</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>37</td>
<td>24</td>
</tr>
<tr>
<td>%</td>
<td>33.94</td>
<td>25.00</td>
</tr>
<tr>
<td>Order</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Motivated/persistent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>35</td>
<td>32</td>
</tr>
<tr>
<td>%</td>
<td>32.11</td>
<td>33.33</td>
</tr>
<tr>
<td>Order</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Skilled negotiator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>31</td>
<td>31</td>
</tr>
<tr>
<td>%</td>
<td>28.44</td>
<td>32.29</td>
</tr>
<tr>
<td>Order</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Hard working</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>25</td>
<td>26</td>
</tr>
<tr>
<td>%</td>
<td>22.94</td>
<td>27.08</td>
</tr>
<tr>
<td>Order</td>
<td>13</td>
<td>12</td>
</tr>
<tr>
<td>Assertive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>18</td>
<td>16</td>
</tr>
<tr>
<td>%</td>
<td>16.51</td>
<td>16.67</td>
</tr>
<tr>
<td>Order</td>
<td>14</td>
<td>16</td>
</tr>
<tr>
<td>Independent/able to work alone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>%</td>
<td>15.60</td>
<td>17.71</td>
</tr>
<tr>
<td>Order</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>A 'people person'</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>16</td>
<td>20</td>
</tr>
<tr>
<td>%</td>
<td>14.68</td>
<td>20.83</td>
</tr>
<tr>
<td>Order</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>Strong social conscience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>%</td>
<td>6.42</td>
<td>14.58</td>
</tr>
<tr>
<td>Order</td>
<td>17</td>
<td>18</td>
</tr>
<tr>
<td>Competitive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>%</td>
<td>5.50</td>
<td>9.38</td>
</tr>
<tr>
<td>Order</td>
<td>18</td>
<td>19</td>
</tr>
<tr>
<td>Enthusiastic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>%</td>
<td>4.59</td>
<td>15.63</td>
</tr>
<tr>
<td>Order</td>
<td>19</td>
<td>17</td>
</tr>
<tr>
<td>Strong leadership qualities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>%</td>
<td>3.67</td>
<td>9.38</td>
</tr>
<tr>
<td>Order</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>
I will return to the issue of management,53 but accentuate here that effective management skills was the tenth most likely attribute to be ranked highly by women, and the thirteenth most likely by men. Being a people person was even lower in solicitors’ contemplation (sixteenth most likely to be ranked by women, and fourteenth most likely by men); while strong leadership qualities was the twentieth most likely by both women and men.

It is in the answers to this survey question that solicitors begin to build up a multi faceted, picture of the very specific and individual skills that feed into their success mix. The individual in-depth interviews added further layers of meaning to an understanding of success as Queensland solicitors see it and live it in their daily professional lives. In the next section I draw together the various strands discussed thus far to propound a success framework for Queensland practitioners.

6.5 A SUCCESS FRAMEWORK

During many hours of interviews, nearly 40 solicitors spoke openly and generously about a range of issues, including their individual ideas of success and the significance or otherwise of partnership within their professional world-view. Their insights, both micro and macro, added multiple layers of meaning and explication to (a) the overarching characteristics of success elicited at Question 21 of the survey; and (b) the more individual and personal attributes or skills generated through Question 19.

This latter group of factors (Q19) included 20 possible attributes. I further considered these under four headings: communication (strong communication skills, logical thought/clear expression, good interpersonal relationships, skilled negotiator, assertive); practical (plenty of common sense, creative problem solver, practical/adaptable, good memory/attention to detail, independent/able to work alone); personal (hard working, high ethical standards, high intellectual ability, motivated/persistent, strong social conscience, competitive, enthusiastic); and managerial (effective management skills, a ‘people person’, strong leadership qualities).

The communication, practical, and managerial skill clusters feed back to both the client and firm foci identified by solicitors – what I term the professional sphere. The personal attributes

53 See: Chapter 7 of thesis. Also: discussion this Chapter at p 6-17, p 6-42.
or skill set dovetail with a more private or individual focus – the personal sphere. This reflects the literature’s acknowledgement of the existence of objective and subjective dimensions of success. These were reinforced by some interview participants, who clearly recognised success might have an external symbol such as a name on a letterhead, as well as an internal dimension, for example, influence within the organisation.

I suggest these diverse views and responses can be represented in a diagrammatic framework incorporating the various aspects of success for Queensland solicitors. All have been addressed at some stage within the extremely broad body of literature that considers the nature of success in today’s workplace. Factors were included in the framework because

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54 For example: Poole, Millicent and Langan-Fox, Janice, Australian Women and Careers – Psychological and Contextual Influences Over the Life Course (1997), 107. The authors argue (112) that the subjective or individual perception of success has been largely ignored.

55 If(f)77: 1 [woman – 50s – left private practice – senior government position].


In relation to some specific ‘signs’ of success identified in the framework – for PROFESSIONAL SPHERE see: Ballard, Nancer H, ‘Equal Engagement: Observations on Career Success and Meaning in the Lives of Women Lawyers’ (Working Paper Series No. 292, Boston, Wellesley Centre for Research on Women, 1998) (solve problems, good outcomes, prepare well, quality files); Harris, Vicki, Litigation Support Management – the winning edge (1994); Snyder, Jean Maclean and Greene, Anda Barmash (eds), The woman advocate: excelling in the 90s (1995) (assist Court, skilled advocacy); Rusanow, Greta, Knowledge Management and the Smarter Lawyer (2003) (update changes in law & technology); Balls, Ashley, Law Firms – Managing for Profit (1998), Howell, Rosemary, McQueen, Christine, Stein, Charis and Stein, David, Quality Management for Legal Practice (1994) (meet budgets, up to date, manage staff); Morrison, Ann M, White, Randall P and Van Velsor, Ellen (Centre for Creative Leadership), Breaking the Glass Ceiling – can women reach the top of America’s largest corporations? (updated ed 1992) (manage staff & time); McKenna, above this n 56 (appropriate income); Rhode, above n 48 , Weisbrot, David, Australian Lawyers (1990) (income, bills met, name on letterhead); Kirner, Joan and Rayner, Moira, The Women’s Power Handbook (1999) (income, bills paid, career opportunities); Book, Esther Wachs, Why the Best man for the Job is a Woman – the unique female qualities of leadership (2001) (career opportunities); Byrski, Liz, Speaking Out – Australian Women Talk About Success. Sydney (1999); Ford, Carolyn (with foreword by Leonie Still), Women Mean Business (1991) (professional recognition and influence).

they were mentioned by more than one research participant or were raised within a variety of
different contexts. Most elements were raised many times by different participants in
interviews. There is, as I foreshadowed in the introduction to this Chapter, one striking
exception in that there was a single direct interview reference to the value of management
skills. This key point is included (highlighted in red) in the framework Diagram, and is
revisited in the concluding Chapter.

The individual attributes needed for recognition as a good lawyer (survey Q19) connect with
the six key characteristics that participants ranked as best defining success (survey Q21). All
are significant in understanding the complex paradigm we call success.

The framework demonstrates that Queensland solicitors do not view success as a one-
dimensional construct, but that at every level there will be intrinsic and extrinsic criteria.
Groupings or clusters of features are not fixed in rigid compartments. For example, a sense of
meeting peers on an equal footing and a belief in a strong work ethic are deeply personal, and
yet obviously relate directly to the solicitor’s everyday public work expectations and
experiences.

I suggest the framework is useful as a starting point in future research, particularly to bring
out more fully the sheer diversity of the solicitor’s experience. It is able to function as a
checklist from which to examine broad characteristics of success as well as individual success
factors that may be most at risk from any structural and cultural barriers within the private
legal profession.

The diagrammatic representation of the composite success framework is set out in Diagram
6.1 on the following page.

satisfaction); Krueger, above this n 56 (equal to peers); Byrski, above this n 56; Ford, above this n 56 (strong
work ethic); Iannone, A. Pablo (ed), Contemporary Moral Controversies in Business (1989); Maister, David H,
True Professionalism – The Courage to Care About Your People, Your Clients, and Your Career (1997);
Robertson, Michael, ‘Renewing a Focus on Ethics in Legal Education’ (Paper presented at Australian Lawyers
and Social Change Conference. Canberra, Australian National University, September 2004); Solomon, Robert C,
A Better Way to Think About Business – How Personal Integrity Leads to Corporate Success (1999)
(recognition & respect, ethical reputation, inspire trust); van Emmerick, J Hetty Euwema, Martin C
Geschiere, Myrthe and Schouten, Marieke F A G, ‘Networking your way through the organization – Gender
differences in the relationship between network participation and career satisfaction’ (2006) 21 (1) Women in
Management Review 54; Swiss, above this n 56 (mentor, networks and contacts); Kirmer and Rayner, above
this n 56; Szircom, Tricia, Striking success – Australian women talk about success (1991) (community
involvement).
PROFESSIONAL – CLIENT & FIRM FOCI
Communication, Practical & Managerial skills

- Client
- Files
- Office

- Solve problems
- Good outcomes for clients
- Prepare cases well
- Assist court
- Skilled advocacy
- Quality files
- Meet budgets
- Keep up with changes in law & technology
  - Manage staff & time

INTERNAL

EXTERNAL

- Rewards
- Profession
- Community

- Appropriate income
- House, car, school fees met
- Career path/progression opportunities
- Name on letterhead
- Influence in profession (e.g. Law Society role/Senior Counsellor)
- Recognised specialist/expert (possible policy input)
- Memberships clubs, associations, boards

PERSONAL – INDIVIDUAL FOCUS
Personal skills/attributes

- Family
- Relationships
- Control over life

- Quality family time
- Maintain friendships
- Money for goals
- Outside interests
- Job satisfaction
- Feel equal to peers
- Strong work ethic

EXTERNAL

- Standing in profession and community
- Networks & contacts
- Helping others

- Recognition and respect from peers and public
- Reputation as honest & ethical
- Mentor others
- Inspire trust and confidence
- Strong informal/business contacts
- Charity work and community involvement

INTERNAL

EXTERNAL

- Solve problems
- Good outcomes for clients
- Prepare cases well
- Assist court
- Skilled advocacy
- Quality files
- Meet budgets
- Keep up with changes in law & technology
  - Manage staff & time

HARD WORKING

ACHIEVES GOALS

HEALTHY, HAPPY LIFESTYLE

RESPECTED by OTHERS

Sphere - Open to public gaze; or personal to solicitor

Characteristics that best define success (→) drawn from survey (Q21)
Attributes needed for recognition as good lawyer (Q19) in context of interview factors
The framework does not depict perceived difficulties or barriers to attaining identified factors or elements of success as a solicitor. I will return to the question of barriers within the profession shortly. At this point I wish to highlight two key points of difference between women and men that emerged from my findings about the characteristics of success.

### 6.6 POINTS OF DIFFERENCE AND CONNECTION

Earlier, I highlighted two items, where women and men differed in their survey responses to a question about the ‘top five’ characteristics that best define success. Working co-operatively with others was the sixth most likely characteristic for women to rank in their top five, and the ninth most likely for men; and being open to change/new experiences was the ninth most likely choice for women compared to the sixteenth most likely choice for men.

I suggest that the ranking of the characteristic of open to change/new experiences in women’s ‘top ten’ is reflective of: the need, and the ability, of many women to move in and out of the profession to accommodate family responsibilities – women with children look around for alternatives, because the profession [does] not particularly [offer] flexible working arrangements;\(^\text{58}\) the fact they are more likely to be engaged part time in the profession – when she had her children [one female partner was] expected her to be doing the same [work and] the same budget – [she left and took a tribunal position] as her children were growing up;\(^\text{59}\) and the need to often re-create their careers, by either coming to law after a prior career, or moving on to further studies and career directions when the legal profession cannot accommodate their personal goals – I’m a disillusioned lawyer who’s looking to get out. I’ve gone back to uni [part time] and I’m doing [a degree in another area of interest].\(^\text{60}\)

These women and others involved in my research shared an ability to change and adapt in various ways. This flexibility and adaptability of women is also noted in Chapter 5 in the

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\(^{57}\) Refer: Table 6.2: Q21 – Characteristics that best define success, p 6-10, where these two characteristics are highlighted in the Table in bold.

\(^{58}\) I(f)44: 1 [woman – 30s – senior associate – metropolitan] (on parental leave at time of interview).

\(^{59}\) I(f)55: 10-11 [woman – regional: describing a colleague].

\(^{60}\) I(f)46: 23, 22 [woman – 30s – senior associate – metropolitan].
discussion about flexible work practices. Commentators have long acknowledged the need for workplace flexibility with the increase in part time work, the ability to harness technology to enable productive work input from remote locations, the acceptance of portfolio careers, and the search for work-life balance. The ranking of this attribute as a significant one by women is an ideal ‘fit’ with the modern and changing face of workplaces moving into the 21st century. However, as I canvass elsewhere, unless women’s voices are privileged and their presence fully acknowledged within the Queensland legal profession, their skills and contributions will continue to be lost.

Some women, and some men, remain marginalised in terms of power within legal workplaces, particularly where older styles of organisational thinking prevail. However, in a competitive business environment, new models and forms of organising and functioning are more often developed at the margins than in the mainstream. Some critics lament that the modern organisation with its ‘gendered substructure’ is ‘relatively inaccessible to change’; while others describe ‘furious change at work’ but a ‘static world at home’. It is a powerful combination of factors that effectively renders at least some women unable to take full advantage of their training and skills and unable to match early professional aspirations with the reality of their eventual legal workplaces.

Working co-operatively with others was the sixth most likely choice for women to rank in their top five characteristics of success (the ninth most likely for men). It has been celebrated by some commentators on management and leadership as a key point of difference between women and men, and described as a particular benefit that women bring to the workplace.

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64 Franks, Suzanne, above n 56, 6-7.
Elizabeth Perle McKenna interviewed some 200 women in the United States. She suggested that women who had reached a certain level of achievement and success would operate very differently in the workplace, if they had the authority to do so. ‘They would reward collaboration, not competition … They would share information and their definition of success would depend more on the quality of what was produced than the system that produced it. Conventional business success … would cede to job sharing and teamwork’.  

In Canadian research, women’s decision-making style was described as ‘more humanistic’ and ‘person oriented’ and women were seen as being primarily concerned with ‘maintaining good relations’. Two Australian academics reported that women were seen as holding a great advantage in future organisations because their inherent strengths would allow them to deliver the ‘[t]eamwork and consensus-seeking, high trust participant management styles’ that would be needed, when the ‘authoritarian, individualised, competitive model of managerial success’ became a thing of the past.

An English sociologist noted women’s management style has been well researched, and that ‘[a]lthough many successful women deny it, the tendency is for women to prefer to manage collaboratively …’ The gendered nature of emotional labour has long been recognised, but there has been renewed and more rigorous interest in this area as a deeper understanding of the nature of emotional labour is seen as critical to an appreciation of the ‘new’ and emerging workplace. Amanda Sinclair and Valerie Wilson draw on the work of psychologists in

for older women. See: Armstrong-Stassen, Marjorie and Cameron, Sheila, ‘Factors related to the career satisfaction of older managerial and professional women’ (2005) 10 (3) Career Development International 203, 212. The authors found that women in professional positions reported significantly less organisational support and career satisfaction than did women in managerial positions.

67 McKenna, above n 56.
68 Ibid, 48-49
69 Sheppard, Deborah, ‘Women Managers’ Perceptions of Gender and Organizational Life’ in Mills & Tancred (eds), above n 64, 159-160.
70 Smith, Catherine R and Hutchinson, Jacquie, Gender – A strategic management issue (1995) 94; 93.
72 As used by Steve Taylor, below n 73, adopting Hochschild, to mean ‘the management of human feeling, during social interaction within the labour process, as shaped by the dictates of capital accumulation’ (in contrast to ‘emotion work’ which is within the private domain). For example, see: Carter, Meg, “‘It’s easier just to do it all myself’: Emotion Work and Domestic Labour” (Paper presented at The Australian Sociological Association Conference, 2003) <www.tasa.org.au>
recognising that ‘connection’ is a central value in the socialisation of women, who ‘tend to put a high value on maintaining relationships ….’. While this early learning is then exhibited in adult approaches, Sinclair and Wilson point out that it has been ‘routinely devalued in models which privilege male values such as upholding abstract logic and maintaining hierarchy’.

Nancer Ballard reported from an ongoing American qualitative study of lawyers (in firms with more than 50 lawyers) that women’s workplace success ‘consistently correlated to the presence of three elements: positive mutual relationships with colleagues or clients; engagement in their work; and the experience of their connection and engagement bringing about greater good and/or stronger personal connections’. The same women reported difficulties, and a sense of dis-connection, when striving to realise their subjective ‘measures’ of success inside male dominated ‘competitive profit-focussed workplaces’.

Achieving partnership can be an exercise in working co-operatively, but the path to partnership can be fiercely competitive and solitary. As one research participant said: we just sit in that office and we’re so isolated from the world. While another commented: very often in a law firm there’s not a great collegiate feeling. If your billable hours are critical and you’re fighting for work, very often you’re competing against the person in the office next to you.

It was clear from my research interviews that the profit motive is bound up with the goal of partnership. Partnership has traditionally been seen as the ultimate symbol of success for

74 Such as ‘Gilligan, Miller and Belenky’.
76 Sinclair and Wilson, above n 75. Also note the finding in my research that women were more likely than men to rank logical thought and clear expression in their top five attributes for recognition as a good lawyer. See: Table 6.4: Q19 – Attributes needed for recognition as a good lawyer, p 6-15.
77 Ballard, above n 56.
78 Ballard, above n 56, 51.
79 Ballard, above n 56, 37.
80 If(f)46: 23 [woman – 30s – senior associate – metropolitan].
81 If(f)48: 9-10 [woman – 40s – former partner now consultant – metropolitan]. This solicitor’s view was typical of remarks made by others: I(m)42: 13 [man – 40s – former partner – regional]. And some solicitors identified the need to achieve billable hours as having a deleterious affect on stress, and hence on achievement, levels: If(f)54: 23 [women – 30s – left private practice].
solicitors in private practice. As the next Section shows, that traditional view is still strongly held despite some members of the profession rethinking or re-visioning the traditional paradigm.

6.7 THE HOLY GRAIL

The epitome of success for many solicitors remains achievement of partnership, or the position of sole principal in their own legal firm. One participant in a 1999 Western Australian study called it ‘the carrot dangled to get people to work so hard’. Others call it the Holy Grail, or, the Golden Chalice.

One woman partner spoke of the difficulties of retaining and promoting women and acknowledged the role of partnership in the definition of success as she herself had made it to the letterhead, the top, above the line. Traditional progress through the ranks of the private profession has involved becoming an articled clerk/trainee solicitor, an employed solicitor, an associate, a senior associate, and then a partner or principal. Although more women than men are graduating from Queensland law schools, and although many solicitors reported during interviews that their firm’s senior associate levels are more than half women, the partnership figures continue to tell another story. In survey responses more than half (56.3 percent) of male participants said they were partners or principals, but just under one quarter (23.6 percent) of women reported they held these business ownership/leadership roles.

Within the private profession, as at June 2006, the Queensland Law Society annual report recorded that 38 percent of all solicitors practising in Queensland were female. This is a marked increase from one quarter of solicitors who were women a decade earlier. The annual report also set out details of practising certificates issued to solicitors. The total number of practising certificates issued reflects the growth in the profession. In 1995/1996 a total of

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83 I(m)36: 2 [man – 40s – partner – metropolitan].
84 I(f)73: 4 [woman – 30s – refused offer of partnership – metropolitan].
85 I(f)34: 19 [woman – 30s – principal – part time – regional].
86 More recently, many students graduate from law schools and then gain employment with a firm while undertaking some form of legal practice course.
87 See discussion in thesis Chapter 1.
88 Survey Q 5 Position held? See: detailed demographic information in Chapter 3.
4,824 certificates were issued and in 2005/2006 this number had increased to 7,109. Despite this substantial growth in the overall size of the profession, the number of certificates issued at a principal level (i.e. a principal solicitor in sole practice or in partnership and having a business ownership role) shifted very little from 2,350 in 1995/1996 to 2,441 in 2005/2006.

This is in part reflective of what some research participants described as a dearth of new partnerships in law firms, with existing partnerships being held closer now as established partners are reluctant to dilute partnership shares. As one woman said: there’s a real feeling at the moment that there’s nowhere to go [as] there’s so few partner promotions each year. However, when the Queensland partnership/principal numbers are interrogated further, it is evident that women, despite their increasing numbers within the profession, are making very little impact as professional leaders. Of all principal practising certificates issued in 1995/1996, 90 percent of these were held by men and 10 percent by women. Ten years on in 2005/2006, the principal level certificates were held 87 percent by men and 13 percent by women.

One senior partner expressed his concern during an interview about the absence of women at the senior level –

*This [lack of female partners] is an issue that our firm is looking at. We’ve appointed a women’s committee and we’re getting data from all over the place to investigate this.*

[man – 50s – senior partner – national firm]

But another prominent male lawyer was dismissive: *if a female wanted to achieve a partnership in a firm then she would do it,* and he suggested further: *you will find those numbers will flow through and that you will see in 10, most certainly 20 years time, more and more women in positions of partnership.* One young woman was more pragmatic in her assessment: *women have to stop work at some stage and have a family and that’s where they lose the race to the men ... and that’s why it’s so difficult to get on the letterhead as a woman.*

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90 If(f)51: 14, 10 [woman – 50s – partner – regional].
91 If(f)46: 9 [woman – 30s – senior associate – specialist area – metropolitan].
92 Information provided via e mail from Queensland Law Society Records Manager 27 November, 2006.
93 Im(m)78: 3.
94 Im(m)79: 6 [man – 50s – former partner] (emphasis his).
95 Im(m)79: 7.
96 If(f)80: 5 [woman – 30s – former associate – moved to private commercial employment].
One female commercial lawyer detailed an impressively successful career – overseas, in various Australian capital cities, and in a major regional centre. Over a period of some years, she was offered an array of lucrative and innovative benefits to ensure her firm retained her services. However, the existing all male partners consistently refused to offer her a partnership. She described the situation as: *I had the problem of being female and married, with no children, so therefore I was going to have children.* She said the assumption she would have children was automatic; and *it was very clear that I would have children and leave the firm as all females do.* This woman eventually left and established her own firm, with the principals at her former firm continuing to regard a female partner as an impossibility.97

Women and men were clearly aware during interviews that partnership has considerable benefits, as one metropolitan solicitor said –

*It speaks of independence. I like the fact that as a partner I have a lot of autonomy. I run my own business unit as I see fit. It makes huge difference. I have clients who have responded to me differently. I saw their attitudes change. I was seen as an equal to them.*  
[man – 40s – partner – metropolitan]98

He identified the most important criterion for partnership as the *ability to develop and sustain a business unit,*99 and was concerned to observe that no female in his firm appeared to have the independence or ability to drive a business case for partnership, asking: *Why can’t the women – even the most senior ones I see here at the moment – start to be seen as potential business generators? If they’re doing that they should get up on merit – they should get up.*100

One senior woman was more blunt: *you’ve got to get a certain, you know, minimum million dollar billing.*101 After some part time years mid career to accommodate young children, this particular interviewee had been back full time and dedicated to her work, and her firm, for quite some years. She consistently came in over budget, was well known and well respected, but recently had again been overlooked for partnership in favour of a younger and less experienced (male) solicitor.

97 I(f)34: 9-10 [woman – 30s – now principal in own firm] (emphasis hers).
98 I(m)36: 2-3.
99 I(m)36: 6.
100 I(m)36: 7 (emphasis his). The criterion was similar elsewhere – see: I(m)78: 3, 4 [man – 50s – senior partner – national firm].
101 I(f)37: 3 [woman – 40s – senior position – metropolitan].
I argue something is missing from this rather simplistic set of criteria for advancement. As one woman tellingly put it, the traditional view of a minimum fee earning level in the context of unbroken years of full-time, often over-time, work within the firm, together with a high profile in client marketing and networking, ignores a very significant issue –

*I think the guys still look to who can bring in the income – rather than [to] who’s actually keeping it within the firm and stopping it going elsewhere*.

[women – 30s – former employee – now principal own firm – regional]102

I will return to this point at the conclusion of the thesis.

Much of the discussion in this Section highlights entrenched attitudes and ways of being within legal firms. The need to change personal views and ideas and associated workplace cultures can be akin to tilting at windmills. However, it is argued that with strong professional leadership and the opening up of a genuine profession-wide dialogue on these issues, some of the practical constraints and barriers can be significantly relaxed or shifted. The next Section considers some of the issues around those structural barriers and difficulties that can arise to prevent a solicitor having a real opportunity to achieve in private practice, be that at the partnership level or otherwise.

### 6.8 A MEANINGFUL OFFER CAPABLE OF ACCEPTANCE103

If both women and men are largely saying they are successful, and women appear to be ‘choosing’ to leave the private profession, or not seeking or accepting partnerships, is it reasonable to conclude that women still face particular difficulties in attaining success? I argue Wacjman’s test is relevant to this question. This requires us to view success as a structural asset that is used in, and operated on by, a particular setting or context.104 My research participants were asked whether they believed they had equal access (with peers in their organisation, or generally in the profession) to a range of workplace benefits.105 Women reported they had basic manifestations of position and prestige in terms of office space and

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102 I(f)34: 17.

103 In contract law there must be an offer and an acceptance to complete a bargain. Too many impediments could render an offer meaningless and hence incapable of acceptance. See generally: Graw, Stephen, *An Introduction to the Law of Contract* (5th ed 2005), 39ff; 77ff; 82; Patterson, Jeannie, Robertson, Andrew and Heffey, Peter, *Principles of Contract Law* (2nd ed 2005), 50ff; 77; also see: Thornton, Margaret, *Dissonance and Distrust – Women in the Legal Profession* (1996) 1ff - on the ‘letting in’ of women to the profession.

104 Wajcman, above n 18.

105 Survey Q13 Do you feel you have equal access with your peer group to following benefits?
facilities,\textsuperscript{106} and secretarial and administrative support.\textsuperscript{107} However, their survey responses revealed they were much less likely to have equal access to salary levels and benefits,\textsuperscript{108} promotion and partnership,\textsuperscript{109} seminars and conferences,\textsuperscript{110} or invitations to official professional activities (such as meetings and dinners\textsuperscript{111}) than did their male counterparts.

The following Graph 6.2 depicts the various workplace benefits and the percentages of women and men who considered they enjoyed equal access to those benefits. There were strongly significant statistical differences between women and men in relation to their perceived ability to access the recognised critical work areas of networking, training and development, and remuneration and rewards.\textsuperscript{112} These differences between women and men in my Queensland study are particularly striking, as the Graph illustrates.

\textbf{Graph 6.2: Q13 – Access to benefits}\textsuperscript{113}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{Q13_Equal_Access.png}
\caption{Q13 Equal Access}
\end{figure}

\begin{itemize}
\item \(\chi^2=2.191, df=1, p=0.139\)
\item \(\chi^2=3.623, df=1, p=0.057\). However, as outlined in Chapter 4, women were more likely than men to report they felt treated with less co-operation and respect, and that their work was less valued, by admin and support staff.
\item \(\chi^2=9.386, df=1, p=0.002\)
\item \(\chi^2=24.853, df=1, p=0.000\)
\item \(\chi^2=10.649, df=1, p=0.001\)
\item \(\chi^2=9.749, df=1, p=0.002\)
\end{itemize}

\textsuperscript{106} These areas are expanded in the subsequent discussion in this Chapter.

\textsuperscript{107} Graph based on these figures: salary levels/benefits F N=72, 67.29%; M N=71, 86.59%; promotion/partnership F N=63, 59.43%; M N=72, 92.31%; office space/facilities F N=91, 85.05%; M N=80, 91.95%; secretarial/admin support F N=91, 84.26%; M N=81, 93.10%; seminars/conferences F N=90, 83.33%; M N=84, 97.67%; invites to professional activities F N=78, 72.90%; M N=78, 90.70%
As I had anticipated, male partners and principals responded with a very high level of agreement that they enjoyed access to most of the items. But, the female partners in the sample responded with much less uniformity. Specifically, where participants responded to the issue of equal access to promotion or partnership, 100 percent of male principals and 83.33 percent of the other men said they enjoyed equal access. However, only 78.26 percent of female principals and 54.22 percent of other women reported that same level of confidence.114

The fact that women who had already achieved partnership or principal status were reporting this lack of confidence admits a range of possibilities: perhaps they had achieved partnership later or with more difficulty than male colleagues had done; perhaps they had achieved their principal status by going elsewhere (either another firm, or starting up their own businesses); or perhaps they had been offered a route to the firm letterhead but one that fell short of an equity share (by way of a salary partnership, consultancy, or the like). Similarly, there is a possible explanation that the very low percentage of women non-partners who reported confidence in their equal access to partnership and promotion had never sought partnerships because they believed those doors were closed to them; or, they did not see such progression as a way to ‘success’ on their terms. These are areas that need much more research and exploration in the Queensland context.115

An important 1995 New South Wales report also identified barriers to women achieving success in that State’s legal profession, describing these as being both attitudinal and structural.116 The report identified some specific factors that impede women’s advancement, and these are strikingly similar to those identified in 1998 by a United States Catalyst Report on ways of advancing women in business.117 The New South Wales report listed issues of work allocation (echoed in a United States finding of a reluctance to give

114 Female equal access to promotion: principal/partner N=18, 78.26% [cf Male N=42, 100%]; employed solicitor/other N=45, 54.22% [cf Male N=30, 83.33%]; χ²=4.318 df=1 p=0.035
115 There have been similar findings in respect of accountants in Australia. A 2001 study found 88% of men believed men and women had equal opportunity for promotion in their organisation, but only 55% of women held this view – see: O’Neill, Marcia, Morley, Clive, Bellamy, Sheila and Jackson, Margaret (CPA Australia), Gender Issues in Australian Accounting – a survey of women and men accountants (2001) 16.
women vital revenue generating experience); development and training; access to promotional activities, networking and client liaison (demonstrated in the U.S. report as exclusion from informal career networks); mentoring (lack of mentoring was also a key U.S. finding); and the need for access to flexible work practices (similarly, in the U.S., lack of flexible career paths was identified as a barrier).

The findings from my Queensland survey – that women solicitors felt less able to access a range of workplace benefits – continue the pattern of findings in the research referred to above. A 2001 report by the Queensland government on the situation of working women generally in the State also highlights the role of access to relevant training and the problems of ongoing inflexible work practices.118 Both the New South Wales and the United States reports listed ongoing issues of discrimination and sexual harassment and these have been more fully discussed in the Queensland legal profession context in Chapter 4. A 2002 New South Wales study119 reiterates the importance of equal access within the profession to promotional opportunities, flexible work practices, good quality work, and freedom from harassment and discrimination in the legal workplace.

Margaret Thornton’s Australian study of women in the legal profession120 described generally women’s lack of access to meaningful career pathways. And across the Tasman, women lawyers in New Zealand consistently report lower incomes than their male colleagues, and less access to partnership positions: ‘there remains both a quantitative and qualitative difference in the rewards and treatment of men and women in the profession’.121 Cynthia Epstein and her colleagues, studying lawyers in New York, have written extensively on the move (usually by women) to establish part-time work in legal firms. They describe the part-time lawyers’ ‘deviation’ from the ‘standard indicators of excellence’122 that, by definition,
include long – some would say, excessive – hours of work. In a wide-ranging examination of gender issues, Holly English also found that women reported being ‘consciously or unconsciously left out of the “insider” circuit’.123

Joan Brockman reported Canadian women were abandoning aspirations of, or were effectively excluded from, partnership by a variety of means that had been highlighted in earlier work by John Hagan and Fiona Kay. The four routes to exclusion discussed by Hagan and Kay are based in social capital theories, whereby: (i) women eliminate themselves because of discomfort with culture, which may include the need for more flexibility; (ii) women leave because they are required to do more than their peers; (iii) women are given less desirable work; and (iv) women are excluded directly by discrimination.124

Kay and Brockman joined forces in 2003 to report the growing onus on partnership aspirants, especially women, to recruit new clients, and build large networks, while committing to promote the law firm’s traditional values and goals.125 They have called for further research to refine assessments of job satisfaction ‘with reference to specific aspects of employment and using a variety of measures …’ 126 which, they suggest, should include pay and rewards, working conditions and work responsibilities.

In the United Kingdom, Clare McGlynn outlined a range of exclusionary practices built around the dominance of a masculine culture in marketing and client entertainment activities, attendance at exclusive clubs for professional and promotional activities, and the extension of work time into ‘practice development’.127 She agreed with Sommerlad and Sanderson that, regardless of the human capital women have in experience and qualifications, the masculine cultural capital required to move effortlessly into the ‘clubbable atmosphere of the partnership or the team’ is likely to be always beyond their reach.128 This ‘atmosphere’ and those who held the recognised cultural capital currency for admission were alluded to by various

126 Ibid, 63.
solicitors during the research; and described by one woman as the suits from Nudgee College – they have a way about them [with discriminatory] attitudes ... so ingrained and entrenched.129

Queensland women, like legal women elsewhere, are unable (perhaps for family reasons) to find extra hours130 to access professional basics such as seminars and conferences, and attendance at other professional activities. This will almost certainly have adverse consequences for women’s professional and partnership opportunities and remuneration levels. More research is needed to explore to what extent the perceived lack of access is as ‘simple’ as lack of time; or due to some more fundamental exclusionary mechanisms that keep women out of the inner circle. One woman described this by saying she felt a little outside of the circle – the communication in the [work] team is a lot better through the men and quite often I’m on the outside.131 One woman took this further asserting those solicitors who found themselves outside the communication loop will be on a sidetrack in the promotion race.132

If women’s differential access to benefits directly leads to their low representation at senior levels of the profession, this will be dangerously compounded as more women (and men) opt out of partnership and, indeed, out of the private profession, seeking career success and personal fulfilment elsewhere. This has long-term implications for the already limited diversity of the profession133 and for the quality of potential candidates to meet the succession and exit strategies of existing, and ageing, partners.

I am not suggesting that no Queensland woman achieves success, be that measured by moving into the partnership ranks, or in some other way; or, that men always have the doors to success opened wide. Rather, the issue is about the need to listen to the voices of women and men in the profession and a willingness to hear and to learn about their understandings of

129  I(f)53: 6-8, 23 [woman – 40s – employed solicitor – regional] (emphasis hers). Nudgee College refers to a private boys’ school in Brisbane.
130  Long hours and billable hours are embedded in private practice culture. This issue was examined more fully in Chapter 5.
131  I(f)46: 7 [woman – 30s – senior associate – metropolitan].
132  I(f)37: 2-3 [woman – 40s – senior position – was part time in the past].
133  See: Thornton, above n 103, 42 and her description of the woman of law who is like the benchmark man – ‘invariably White, Anglo-Australian, heterosexual, able-bodied, middle-class, and espouses middle-of-the-road political and religious beliefs’.
success and their identification of the barriers to it. In this context, I turn to the question of why solicitors in fact remain in private practice. The survey asked participating solicitors to consider a list of possible reasons\textsuperscript{134} why they continued to work as solicitors. The data from this question are considered in the next Section.

6.9 STAYING IN THE MAIN GAME

Solicitors who participated in the survey were asked, regardless of whether or not law as a career has lived up to their expectations, why they initially decided to become a lawyer, and also why they continued to be a lawyer. Answers to the second question are considered in this Section in the context of success, as some of the options listed in the question fit the constellation of factors solicitors identified as being key to their success in the law.

There were no statistically significant differences between women and men in their ranking of the ten main reasons. Table 6.5\textsuperscript{135} on the following page displays numbers and percentages of survey participants who ranked a particular reason in their top ten. Participants were asked to consider the reasons, and indicate in order of significance those appropriate to their individual situation. I have used ‘order’ columns for ease of comparison of any differences between the women and men responding to this survey question.

\textsuperscript{134} Survey Q9 Why do you continue to be a lawyer?

\textsuperscript{135} Some demographic factors could also influence a particular reasons to continue as a lawyer. These are set out in Appendix 15. From the full list of reasons, those affected were personal satisfaction, intellectually invigorating, opportunity to meet range of people, exciting/challenging/never boring, as well as the ‘negative’ factors of no options and debt/finances did not permit a change.
Table 6.5: Q9 – Reasons to continue as a lawyer

<table>
<thead>
<tr>
<th>Q9 - Reasons</th>
<th>FEMALE</th>
<th>MALE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Personal satisfaction</td>
<td>60</td>
<td>57.69</td>
</tr>
<tr>
<td>Intellectually invigorating</td>
<td>46</td>
<td>44.23</td>
</tr>
<tr>
<td>Opportunity to meet range people</td>
<td>40</td>
<td>38.46</td>
</tr>
<tr>
<td>Exciting/challenging/not boring</td>
<td>38</td>
<td>36.54</td>
</tr>
<tr>
<td>Would change but no options</td>
<td>34</td>
<td>32.69</td>
</tr>
<tr>
<td>Way to help others/make difference</td>
<td>24</td>
<td>23.08</td>
</tr>
<tr>
<td>Enjoy high status/income</td>
<td>24</td>
<td>23.08</td>
</tr>
<tr>
<td>Would change but financial constraint</td>
<td>19</td>
<td>18.27</td>
</tr>
<tr>
<td>Allows flexibility</td>
<td>13</td>
<td>12.50</td>
</tr>
<tr>
<td>Enjoy highly competitive work</td>
<td>7</td>
<td>6.73</td>
</tr>
</tbody>
</table>

I suggest the ranking of the negative reasons for staying within law is significant. For women the option ‘would change, but no alternatives’ was the fifth most likely reason to be ranked by them in their key reasons to continue as a lawyer; with their eighth most likely being ‘would change but debt or finances won’t permit it’. Men, seen historically as being the success stories of a profession they have made their own, ranked ‘would change, but no alternatives’ as their fourth ‘most popular’ reason; with ‘would change but financial constraint won’t permit it’ as the fifth most likely choice to be included in the top reasons they continued to practise as solicitors. In real terms, this would suggest that many of the profession’s best and brightest may not count job satisfaction and enjoyment within their parameters of professional success, but feel trapped in what many described in interviews as an *unforgiving* and *unrelenting* profession.¹³⁶

Solicitors have spoken clearly of their need for flexibility, but only a handful of women (with or without children) or men nominated their profession as offering an incentive to continue in practice because of the flexibility to be involved in other pursuits or interests.

¹³⁶ For some practitioners (often men) the ‘trap’ is compounded by the need to fulfil the role of principal breadwinner. Interviewee I(m)41 spoke at length about the ‘lawyers’ trap’. References to the *unforgiving* and *unrelenting* nature of the profession were made by several interviewees e.g. I(m)30: 5; I(f)38: 30, 31; I(m)47: 21; I(f)50: 24; I(f)76: 14; I(m)79: 13.
Table 6.5 lists all the surveyed reasons to continue as a lawyer, while the following Graph 6.3 extracts the ‘top five’ most popular rankings for the women and the men who participated in the research, thus incorporating six reasons in total. The graph is useful here to highlight the similarities between women and men in their rankings of their top five main reasons for continuing to practise as solicitors.

**Graph 6.3: Q9 – Top ranked reasons women and men continue as lawyers**

Personal satisfaction was a key driver to retain men within private practice. But some men were also clearly saying they would leave the profession if they were not constrained by lack of other options or financial strictures. These sentiments were strongly reinforced during the research interviews, as one male principal said: *If I could, I’d stop immediately. I don’t yearn to do anything else, I just yearn not to do what I’m doing.* While another reflected on what he saw as something of a wasted life: *at the end of the day I can’t stand back and look at something. There’s nothing I can show my son and say: “Look, I did that” … It’s a very lonely existence. I was very ignorant and very stupid that I stayed for as long as I did.*

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137 See: Table 6.5: Q9 – Reasons to continue as a lawyer, p 6-33.
138 (m)47: 3-4 [man – 50s – partner – regional]. There were other typical examples: (m)35: 22 [man – 40s – partner – metropolitan]; (m)41: 29 [man – 30s – employed solicitor – regional after leaving city to find better balance]; (m)30: 4-5 [man – 30s – employee – small metropolitan firm].
139 (m)79: 14, 8 [man – 50s – former partner: reflecting on private practice].
In the course of interviews, some women also took pains to point out the price some men, and their families, paid for that traditional success package of partnership –

They don’t have the choice of saying: “I hate it”. I know senior male solicitors where I’ve said: “Do you actually like what you’re doing?” – “No I don’t”. But they would never in a million years think they could walk away from the profession. [woman: reflecting on men in private practice]

It was disturbing to hear some often high profile and well-regarded practitioners speak of such deep dissatisfaction with their professional lives. It was apparent that some practitioners were suffering more than disillusionment, but were also suffering symptoms of depression. This is an important issue in considering the overall ‘health’ of the profession and I will return to it in the concluding Chapter. Often stated dissatisfaction by women as well as men, coupled with the fact that so many women in particular do leave the profession throws into sharp focus the lack of research and understanding around these issues in a specifically Queensland context.

I suggest that one key factor that enables solicitors to feel a real sense of connection to their legal lives is a sense of self-esteem and confidence in their ability to work and to achieve at a high level of competency and skill. While very few men directly mentioned the issue of confidence, for their female colleagues the issue of confidence and self-esteem was a significant one, as I have alluded to earlier. I look in more detail at this question of women and self-confidence in the next Section, together with a brief review of barriers to success generally as identified in my research.

6.10 A MATTER OF CONFIDENCE and OTHER OBSTACLES

While I had not expected the openness with which some men would talk about their dissatisfaction with their professional lives, I was even less prepared to hear a number of women voice a deep lack of confidence in their abilities and achievements. The comments of one woman who had been a solicitor for more than 20 years, and who was a partner of some years standing in a well established and large firm in a major regional centre, typified some of the remarks that were made by female practitioners –

140 I(f)73: 25. Also: I(f)32: 6-7 [woman: describing young male partner].
141 I am not attempting any medical/psychological diagnosis here, but relying on comments made and terminology used by participants themselves. This issue is developed more fully in Chapter 7, Section 7.2 Is It a Kitchen That is Too Hot?, p 7-4 ff; also see: Chapter 5, Section 5.3 The Price is Stress, p 5-8ff.
142 See: discussion Chapter 1.
I’m in a position where I’ve been working to get to for a while … I’m not sure if I’m there yet [laughs] … I’m not persuaded that I’m performing at optimum levels as a partner. There’s more that can be done [pause]. That might be because I go through life thinking: “I’m a fraud and they’ll find out soon” [laughs].

When I suggested many women made similar remarks, this solicitor suggested that a lack of confidence might be what pushes us to perform.143

Another aspect of a lack of confidence in more senior legal women is the suggestion that this may inhibit their willingness to mentor junior women.144 In the past there has been an abundance of psychological theories suggesting women had a fear of success that inhibited their performance, that their lack of success was somehow inherent to their nature.145 These ideas have been discredited, but a suspicion of a woman’s innate inability to achieve still seems to linger in some quarters. One male interview participant thought it was less likely women could succeed in adversarial disciplines146 and another queried, although it might sound sexist, whether women were suited to the essential role of problem solver required of a solicitor.147

One commentator has suggested that what may appear to be a fear of success is a deliberate avoidance, because women see the consequences of conventional career success in competitive and male dominated cultures as ‘punishing, costly or worthless’.148 I discussed in Chapter 5 the difficulties women face in combining the dual roles of parent and lawyer. In Chapter 4 I outlined how the imposition of stereotypes and outdated roles can effectively exclude women from being serious contenders in the success stakes. In the opening sections of this Chapter,149 I also suggested that the apparent choices available to professional women were often illusory. As Terri Apter posits ‘[c]hoice has both voluntary and structured aspects; choices are made in circumstances we ourselves do not choose’.150 She argues that the career journeys of many women ‘cannot be explained by an internal flaw, but by the contexts in which they make decisions’. Thornton opined that an assumption that women do not want

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143 I(f)51: 1, 4 [woman – 50s – partner – regional].
145 For an overview of this see, for example: Lips, Hilary M., Sex & Gender – An Introduction (3rd ed 1997), 351ff. See also: Wilson, Fiona M, Organizational Behaviour and Gender (2nd ed 2003) 65ff.
146 I(m)35: 4 [male – 30s – partner - metropolitan].
147 I(m)41:13 [male – 30s – employed solicitor – regional].
149 See: Section 6.2 A Contested Notion, p 6-3.
150 Apter, above n 148, 179.
partnership is a variation on the ‘fear of success’ theme – ‘women’s choices are socially constructed through assignation to less prestigious work and underpinned by structural factors, such as the inadequacy of institutionalised child care’.  

It is beyond the scope of this thesis to explore whether at least some women may ‘set up’ an apparent lack of drive for traditional success and status in order to avoid the disappointment of ‘failure’ when their careers derail or do not match the early promise, excitement and ambition. It is significant that many women are expressing a lack of confidence, both in general terms of women’s ability to understand and negotiate a male culture, and also in terms of an individual capacity to gain admission and acceptance based on their proven credentials, expertise and achievements. The issue of confidence, and the closely related ability to easily move into or ‘fit’ an existing professional culture, was not raised by all women. But it was raised by a number of women in very specific terms.

One well established female sole practitioner with a large regional practice, who spoke about women’s perceptions of male arrogance, reflected on the issue of self-confidence this way –

A: None of us seemed bothered by [men’s arrogance], but that’s not to say [we] haven’t been affected by it later on. Men seem to be much more confident. We as women seem to be more hesitant and unsure of our abilities. I remember we went on an advocacy course and we girls spent our whole time wondering whether our hair up looked better on camera – or down. Did we look skinnier side on … Where the guys just got in there and didn’t even care about the cameras being on. We were all very concerned that somebody looking at [the tape] later on would make decisions as to our abilities based on size and shape … [pause] …

Q: Perhaps you knew that society did make those decisions about women? What you’re describing is somebody sounding really worried that you were going to be judged on the wrong criteria?  
A: I guess so … We were insecure the whole way through the course.

Q: Women have said to me about confidence … do you think that is an issue for some women?  
A: Definitely – definitely – we definitely lack … We joke about the arrogance training [for men]. It’s probably just the male confidence and they’re confident from the day they hit university ...

[woman – 30s – sole principal – regional]  

These views held by many women solicitors accord with Thornton’s argument that ‘the confidence exuded by … benchmark men in training arises from the belief that they are the

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151 Ibid, 178; Thornton, above n 103, 188.
152 ß(f)43: 24-26 (emphasis hers).
rightful heirs to positions of power and privilege in our society’. Hence, such men do not experience difficulty or discomfort in ‘fitting in’ to positions that have been created by their homogenous male predecessors.\footnote{Thornton, above n 103, 81.}

Another woman, who had had a successful prior career outside law and was active on various committees and boards, was clear as to the significance of confidence in her legal career. She acknowledged \textit{confidence is a big issue and something I need to work on.} A senior partner in a large regional firm when canvassing the need for flexibility to enable women to manage career and family in order to achieve success by way of partnership, commented: \textit{the other thing is I think too, women are still perhaps not confident of their own abilities.}\footnote{I(f)80: 23 [woman – 30s – former associate – regional].} Although women’s self-confidence or esteem was not an issue that I set out to explore, it arose with such clarity in the course of the project that I believe it is an essential consideration in our broader understanding of the barriers encountered by women in their journey towards successful professional participation.

My Queensland research identified a number of barriers to women’s achievement of professional success as solicitors. As we have seen in Chapter 4, there is a bundle of issues arising out of ongoing discrimination and sexual harassment in the workplace. Where women are viewed in sexual terms they are unlikely to be seen as serious contenders for scarce vacancies at the partnership table. In turn, this makes it unlikely they will be mentored and supported and encouraged along partnership pathways. Women must largely assume primary responsibility for childcare especially during children’s early years. While workplace flexibility is a much-touted concept, its promise has been illusory for many women who seek to combine motherhood and a legal career. For women who take time out, the opportunities to re-enter their profession may also be severely proscribed.

There has been little public professional debate about these issues in Queensland. Solicitors themselves speak of women having choices, but there seems little understanding of underlying or systemic issues that can render choice meaningless. Nor has there been profession wide debate and dialogue about success and whether it must always mean the \textit{Holy Grail} of partnership. Another key question is whether partnership needs to be a full time
equity partnership. I suggest an even more significant question turns on what are the actual criteria for admission to partnership ranks, whether these are openly and transparently promulgated, and whether they are equally achievable by all contenders.

Survey findings demonstrate that there are clear structural obstacles by way of lack of equal access to networking, training and development opportunities, and in-firm remuneration and rewards. Whether these arise out of a culture of discrimination or foster such a culture is unclear. The consequences for those ‘outside’ the inner circles of ‘team’ communication and workplace knowledge are the same. It may never be clear whether this complex mix of factors fosters a lack of confidence in some women within the profession by reinforcing their sense of being unwelcome outsiders; or, whether some women learn well before commencing their legal studies that a place for them in a male dominated culture will be, at best, a tentative one.

I argue all of these issues can be usefully examined through the lens of workplace culture and within a framework of human resource management. This theme has been visited in earlier thesis Chapters and I will return to it in the concluding Chapter. I argue it is essential for the profession itself to embark on such an examination as many practitioners express dissatisfaction and disillusionment with their profession and the opportunities they fail to find within it. As the next Section highlights, Queensland solicitors are leaving the profession and seeking career challenges and satisfaction elsewhere, while some who stay now reject the traditional pathways and rewards even when these are available to them.

6.11 REBELLION IN THE RANKS

Whether solicitors are re-defining success because they cannot achieve it in a meaningful way through traditional pathways available in the private profession, or whether they simply see greener pastures elsewhere, there is talent being lost to the Queensland profession.\(^{156}\) A number of practitioners clearly felt there were better jobs to be had elsewhere, either because of the intrinsic attraction of the work (\textit{there’s more interesting jobs outside of private practice ... there’s other opportunities});\(^{157}\) or because other careers held out the promise of a real

\(^{156}\) There is no specific Queensland research on the numbers of solicitors leaving practice, the reasons they are leaving, and/or what alternative employment they pursue.

\(^{157}\) If(70: 4 [woman – 50s – formerly private practice – now senior level in corporate sector].
ability to combine a career and parenthood (It seems to be a lot easier to make [senior level] if you’re single or if you don’t have kids).158

As I have discussed, men too have expressed real concern about the ability to be truly engaged with their families and to manage a high-level private practice legal career. Both women and men expressed concern about the stress of maintaining (in some private legal firms) the set allocation of billable hours each week. The following remarks are representative of the sense of concern, even despair, felt by some who moved to other legal workplaces that operated under different parameters; or, who went on to leave the profession altogether –

You’ve got all those pressures on you. It is a very, very lonely place and here I was, a senior partner, dreading one of the [other] partners coming around because I didn’t make billable hours.
[man – 50s – former principal – metropolitan – now corporate]159

In some firms, a solicitor is just a machine, a billing machine.
[man – 30s – experience in small and large metropolitan firms]160

I can remember the sense of joy at getting away from time costing.
[women – 50s – after leaving a senior position in private practice]161

It’s all about billable hours. They are pushing themselves to get those billable hours and they don’t care at what cost.
[women – 40s – part time – large national firm]162

This last observation was made by a woman with some 25 years experience as a solicitor in private practice, and she went on to emphasise her concerns for the future of her profession –

The thing that worries me about the future of the profession is this concentration on billable hours. It started out as a management tool, and that was fine. But it’s [a set number] of actual billable units. It’s not what you’ve done in research, or in assisting younger ones, or for the community, or in administrative requirements.163

These genuine expressions of concern have no broad public forum within the profession. Although, many find a voice through groups such as Young Lawyers and Australian Women Lawyers. Long held and deep-seated dissatisfactions combine with new aspirations from an emerging generation of lawyers. As we have seen, younger lawyers, women and men, are

158 I(f)71: 3 [woman – 50s – formerly private practice – now government sector].
159 I(m)79: 13.
160 I(m)30: 25, 27.
161 I(f)77: 1-2.
162 I(f)32: 3-4.
163 I(f)32: 20.
prepared to state that partnership is not necessarily a career goal. While much of the disquiet appears to be driven by younger solicitors who have different expectations about family and private life, older practitioners may have no option but to accept and accommodate the aspirations of newer practitioners to ensure the workability of their own succession and exit strategies. As research interviews demonstrate, the Holy Grail may be somewhat tarnished.

Solicitors spoke of refusing partnerships,\textsuperscript{164} of senior male lawyers \textit{not giving a damn} about the need to accommodate work and family,\textsuperscript{165} of the hope younger men’s desire for a quality family life would bring change,\textsuperscript{166} and of some practitioners simply turning their back on the obligations and responsibilities of partnership, with serious future implications for the current equity holders in firms as they \textit{are going to have a business which is not going to be worth much}. This gloomy prediction is already being borne out in national terms with the results of the 2007 Mahlab private practice survey showing that the ‘percentage of respondents who expressed an interest in pursuing partnership … dropped from 56 percent last year to 42 percent this year’.\textsuperscript{167}

Certainly women face a particular dilemma in their striving for success. Jennifer Hatfield identified this succinctly in the dichotomy she saw between the need for women to appropriate for themselves a masculine paradigm of success in a masculine world, while at the same time claiming the very basis of the male success stereotypes is problematic.\textsuperscript{168} As I have detailed, Queensland solicitors in general echo other studies and commentaries in their understandings of the complexities and intricacies that underlie the deceptively simple term ‘success’. Women and men both privilege similar key characteristics as important for success, but as individuals they may also articulate notions of success, and strategies around its attainment, in quite different ways. For any individual the meaning of success may shift and change during the life course. The material presented in Chapter 5, as well as in this Chapter, demonstrates that flexibility and the opportunity to privilege family is often critical to a sense

\footnotesize{\textsuperscript{164} I(m)30: 1[man – 30s – employed solicitor – metropolitan].
\textsuperscript{165} I(f)73: 19 [woman – 30s – following her refusal of a partnership].
\textsuperscript{166} I(f)38: 23 [woman – 50s – senior litigator – metropolitan].
\textsuperscript{168} Hatfield, above n 17 – with reference to Jane Flax (1990) (at 165). See also: Clare, Jillian, \textit{Becoming Leaders: An investigation into women’s leadership in male-defined and male-dominated professions} (PhD Thesis, Centre for Innovation in Education, Queensland University of Technology, 2003); Matz, Irene, \textit{Women leaders: their styles, confidence, and influences} (Thesis, Claremont Graduate University, 2001).}
of achievement and satisfaction within practitioners’ lives generally, and within their chosen profession in particular.

6.12 CONCLUSION
Essentially, Queensland solicitors see themselves as successful if they are respected, honest, hold strict ethical standards, lead healthy and happy lifestyles, work hard, and attain personal goals. There were no major differences between women and men in this regard. When detailed views about the individual skills and attributes needed for recognition as a ‘good lawyer’ were drawn into the mix, it was possible to build a diagrammatic framework of success which illustrates both public and private dimensions, professional and personal features. The framework highlights the complex range of factors that solicitors understand to comprise success.

When solicitors nominated the diverse range of characteristics and skill factors they saw as essential to define professional achievement, there was considerable repetition, restatement and overlap. Management, and particularly the ability to manage people, was the only item to receive a sole mention. I suggest this is a vital factor in achieving equity in private practice and ensuring that the possibility of success is equally open to all. Across the broad spectrum of Queensland solicitors, from mega firms (where specialist management staff are engaged), to medium size firms, to sole practitioners, in both metropolitan and regional settings, the key issue of management was not an issue that came readily to mind for research participants without prompting. Skilled and innovative managers are needed to facilitate shifts towards more inclusive, flexible and creative ways of working inside 21st century workplaces. This is integral to all solicitors being able to achieve success in private practice.

The women who participated in my research were more likely than men to identify with collaborative and flexible working styles. For many women, and for some men, the masculinist culture still prevalent in areas of private legal practice is non-inclusive. Women were more likely than their male colleagues to be constrained by the traditional legal workplace. Many of the principals and partners heading firms, or the senior practitioners

170 This was mentioned not by a solicitor currently within private practice, but one who had moved into a senior government role that required the exercise of a range of management skills as inherent requirements of the role that the solicitor now performed. Also: Smith and Hutchinson, above n 70.
leading work cells or groups within firms, continue to dismiss women as possible serious
contenders for promotion. Survey and interview data revealed many voices speaking of
pressure, stress, and dissatisfaction and this, in turn, re-emphasised aspects of the
discrimination and flexibility debates outlined in Chapters 4 and 5.

Questions emerged about the traditional hallmark of success, partnership, and the fact that
some practitioners consciously choose to reject this path. Whether by choice or force of
circumstance, women continue to be poorly represented at this principal or equity owner level
of private practice. This calls into question whether partnership (as it now operates in high
pressure, long hours, and sometimes all consuming workplace settings) is an impossible goal
for some, or a realistic option that can be accepted or rejected at will. When this question is
viewed in the light of the crucial finding that women and men report unequal access to a
range of workplace benefits around promotion and remuneration, training, and networking, it
underscores that women’s experience of their profession is far more problematic than that of
men.

It appears that the criteria for admission to partnership are not transparent and open to all
aspirants. Those criteria seem ad hoc from firm to firm, and may take no account of work or
professional contributions beyond billable hours. Importantly, the effort that is contributed by
solicitors who provide top quality legal services to clients once those clients are introduced to
the firm has no equivalence or weight compared to the fact of introducing the client to the
firm initially.

When women’s apparent lack of confidence is added to a mix of structural barriers within the
profession, and domestic inequalities outside it, coupled with a growing indication of
discontent from men in search of a balanced lifestyle, I argue the profession must change in
order to retain and reward talent in its ranks. If we accept the importance of the legal
profession to the maintenance of a robust and egalitarian society, it is crucial to acknowledge
any patterns of stratification and/or inequality within the profession itself, because –

… inequality among lawyers may suggest much about whether access to justice in our
society is fairly distributed. If race, gender, and social class are determinants for entry
into the profession and for the attainment of certain positions within [it], it may imply
these same attributes affect the sorts of treatment individuals will receive [from] legal
institutions, in part because they do not have access to lawyers who share a similar social background’.\textsuperscript{171}

While individual lawyers may have different goals and different notions of success, the profession itself needs to strive for success in the inclusion, support, and representation of all lawyers at all levels. A more inclusive profession also has a business imperative in Queensland where many senior solicitors referred to the difficulty of obtaining professional staff.\textsuperscript{172}

In the next Chapter, within the context of legal professional culture, I revisit the question of barriers to achievement, and discuss the human resource management implications of most solicitors’ failure to value and privilege modern management skills and techniques within their workplaces. Many of the most significant issues facing solicitors at the beginning of the 21\textsuperscript{st} century (recruitment and retention of quality staff, access to meaningful career paths, creating a discrimination free workplace, managing for diversity, the feasibility of flexible workplace practices, the breaking down of pockets of traditional culture which exclude and marginalise women, mentoring, accommodation of different goals) are problems of human resource management that I argue can be responsive to progressive, thoughtful, and skilful management approaches.


\textsuperscript{172} This reflects the nation wide position. In their 2005 private practice survey, Mahlab reported that candidate shortage was ‘one of the most significant factors pushing salaries up’ – see: Mahlab Recruitment, \textit{Mahlab Survey 2005} (2005), 1. In interviews, many practitioners made reference to the difficulties in obtaining staff, particularly in regional areas.
### CHAPTER 7. TAMING THE BEAST

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CHAPTER 7. TAMING THE BEAST

‘The issues studied are there, like it or not; they do not vanish through not being studied’
> Jeff Hearn and Wendy Parkin

A: [The legal profession] is good at giving advice [but] it’s not good at taking it … [It’s] autonomous isolated individuals creating their own environments, and that, to some extent, militates against how to do it differently. I think the beast will always be the beast that it is.
Q: Do you think the beast, the profession, does disadvantage women in the way it’s currently constructed?
A: It must do because the numbers speak for themselves and that’s a shame. We’re not only losing the talent, we’re losing the different influence.
> man – 40s – partner – metropolitan

7.1 INTRODUCTION

In Chapter 1 of this thesis I posited that the three key research areas of discrimination, flexibility, and success would be bedrock determinants of the health and future of private practice for Queensland solicitors into the 21st century. I subsequently argued that these three issues were closely interrelated and that it was not possible for solicitors to openly engage in debates about workplace flexibility, or in dialogues about achievement and success, when discrimination continued to afflict legal lives and workplaces. I maintained add-on or ad hoc policies to counter discrimination, or to promote workplace flexibility, as well as the offer of ‘alternative’ career paths, would be ineffective and essentially meaningless if not built on the strong foundations of an equal opportunity, equitable culture at every stage of the legal professional journey.

This concluding Chapter summarises the key research findings. As has been discernable throughout the thesis, my findings, together with attendant discussion and

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2 I(m)36: 26 (interview conducted 2005). This solicitor was not alone in referring to the profession as ‘the beast’ – I(f)33: 6 [woman – 50s – partner – regional].
3 See: Chapter 1, Section 1.1 Introduction, p 1-1, at p 1-2.
4 See: Chapter 1, Section 1.8 The Argument and How It Will Unfold, p 1-24.
analysis, have been based upon statistically significant findings. Where there have been opposing, or discomfirmatory, survey findings or interview input, those findings and views have been incorporated in the discussion within Chapters; mentioned in footnotes (especially in circumstances where there are few opposing voices); or set out fully in Appendices so that the complete findings from each part of the Statewide survey instrument can be scrutinised.

I argue that one of the strengths of the research findings is the strong conjunction of views gathered from Queensland solicitors during the research process. This concluding Chapter generally confines discussion to these broad majority findings. As the various summaries and tables of data and findings throughout the thesis reinforce, not all women or all men held a particular view on a particular issue. Some enjoyed a discrimination free workplace, with a culture of inclusion and flexibility, and saw themselves as having full and equal access to career pathways to success. However, the majority of hardworking practitioners did not report these advantages.

For convenience, the Chapter groups the key findings around the three central research areas, although there is considerable overlap between them. Section 7.3 summarises findings about discriminatory and exclusionary work practices. Section 7.4 reviews findings related to workplace flexibility. Section 7.5 looks at the research results around success.

The findings are related to the research questions posed at the commencement of the thesis. The central research question asked what was the extent of prejudice and gender bias within the solicitors’ branch of the Queensland legal profession. The research findings are crystallised within and against a number of subsidiary or component questions and issues around how solicitors articulate their daily lives in a number of contexts, namely –

- motivations to enter and leave the profession;

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5 Refer: Chapter 2, Sub-Section 2.4.3 Statistical Analysis, p 2-13ff.
6 Differences in the experiences and views of different demographic groups within my research sample are referred to throughout the thesis, and full demographic findings are set out in thesis Appendices 5, 6, 8, 9, 10, 11, 13, 14, 15, and 16.
8 See; Chapter 2, Section 2.4 The Methods, p 2-7 – “adding” one layer of data to another to build a confirmatory edifice’ at p 2-8 to 2-9, n 37, n 38, n 39.
• experiences of discrimination or disadvantage;
• management of daily practice pressures to balance family and other interests;
• barriers to success and how success is understood;
• Queensland women’s experiences compared with lawyers’ experiences in other jurisdictions generally, and with Queensland male colleagues in particular;
• differences in individual women’s experiences;
• the response of the Queensland Law Society to perceived difficulties;
• ‘best practice’ in other jurisdictions and in the corporate world; and
• the legal workplace experience and human resource management.

This Chapter highlights the need for competent 21st century legal workplace management skills that promote and facilitate: an equitable and respectful culture; flexible work policies and practices that enable solicitors to achieve a work life balance; and creative and realistic career options that recognise and reward a range of skills, contributions and commitments. However, the Chapter also recognises and analyses the difficulties and barriers entrenched in outmoded workplace cultures.

Within a wider management debate, the Chapter acknowledges that policies and practices may be introduced, but founder when they do not appear to deliver their initial promise, or when unintended consequences create other problems. The Chapter suggests ways that diagnostic tools and checklists developed in this thesis can be used to ‘audit’ legal workplaces. It also propounds a practical model for implementation of workplace policies.

The Chapter also looks at the role of the Queensland Law Society. This is done in two dimensions – from the perceptions that solicitors have of that role to date, and the role solicitors would like their peak body to take in the future in relation to the key research areas. The thrust of this Section is not prescriptive, but rather to create departure points for conversations among individual practitioners and within the wider profession so that genuine dialogue can be opened up on ways that the lives of lawyers can be made healthier, happier and more productive. As has been the case throughout the thesis, this Chapter draws on human resource management discourses,
specifically to suggest ways forward for the profession.

Finally, the Chapter suggests directions for future research and inquiry. This is of singular importance because my research, and other research recently carried out in Queensland, is a beginning and cannot have all the answers. I turn first to what I see as two indicators of the ‘health’ of the profession and its practitioners.

7.2 IS IT A KITCHEN THAT IS TOO HOT?\(^{10}\)

It is apparent from my research that the health of the Queensland profession is under threat. I have indicated that two measures of dissatisfaction and dis-ease within the profession are the numbers who are leaving private practice and the increasing concerns about depression. Practitioners continue to leave the ranks of solicitors, with women more likely to leave than their male colleagues.\(^{11}\) Many solicitors also reported they would leave the profession if they could. Nearly one-third of women and men said they would change but that they could see no option or alternative career open to them.\(^{12}\) More than one-quarter of the men reported they would change but were prevented from doing so by financial constraints.\(^{13}\)

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10 See: Chapter 1, Section 1.2 Backdrop to the Research, at p 1-3 n 6. Also see re kitchen metaphor: Croucher, Rosalind, ‘The Academy as Kitchen – A subversive perspective on the (prehistoric) paradigm of ‘women-in-the-kitchen’ in (2005) 31 (1) Hecate 6.

11 See: Chapter 3, Section 3.3 Comparison with Broader Picture, p 3-9, at p 3-11; and Section 3.5 The Lady Vanishes, p 3-14.


13 Table 6.5, above n 12 – Men 27.17% and women 18.27% indicated this as a reason to stay in law.
My research shows that more than three-quarters of all solicitors reported they found their work psychologically stressful, and at least half also said it was physically exhausting, intellectually taxing, emotionally draining, and that it consumed most of their lives.14 Women were more likely than men to be affected on all these measures, but significantly more likely than their brothers-in-law to find their work psychologically stressful.15 More than one-quarter of all solicitors said they resorted to alcohol or prescription drugs to cope with work pressures.16 Some spoke of a culture of heavy drinking.17 In the course of confidential interviews, women and men spoke openly about the stress levels in their jobs, described as impossible at times, and also the sense of isolation that resulted from a reluctance to admit publicly to any problems with their work, or their ability to cope with work demands.18

These findings link to increasing cases of depression among solicitors. One law firm partner participating in research interviews stressed his concern, describing increased levels of depression as a key issue of importance for the private profession.19 Queensland’s Legal Services Commissioner, John Briton, indicated he believes many of the complaints made to the regulatory body ‘highlighted the fact that lawyers were too often “miserable, depressed and not coping very well”’.20 Queensland Chief Justice Paul de Jersey described the incidence of depression as a ‘disturbing phenomenon’. He pointed out that a more balanced lifestyle was critical in managing the pressures of practice and would, in turn, ‘enhance … delivery of good quality legal service’,21 while the Queensland Court of Appeal President Margaret McMurdo warned of ‘widespread depression among lawyers’.22 In a conference address, Commissioner Briton cited a 2007 survey which found that lawyers are two and a half times more likely to take drugs than the general population.23

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14 See: Chapter 5, Section 5.3 The Price is Stress, p 5-8, esp Table 5.1: Q15 – Effects of work pressure, at p 5-9.
15 Ibid, esp p 5-9; Mann Whitney (MW)-U=3952.00  Z=-2.719  p=0.007.
17 See: Chapter 5, ibid, at p 5-12 n 48.
18 Chapter 5, ibid, at pp 5-11 to 5-13.
19 [m]72: 15-16 [man – 40s – partner – metropolitan].
22 Houghton, above n 20.
times more likely to suffer from clinical depression than other professionals. He also referred to Brain and Mind Research Institute research which found it four times more likely lawyers would succumb to depression.\textsuperscript{23}

Reports about depression affecting lawyers are appearing in professional publications and continue to be published in the general media.\textsuperscript{24} In the wider community there has been an acknowledgment of the significance of this illness for some time.\textsuperscript{25} The profession has been slower to react.\textsuperscript{26} In October 2008, the Queensland Law Society announced they would participate in a working group ‘to identify and develop initiatives aimed at supporting members and limiting the risk of depression and anxiety’.\textsuperscript{27} Most significantly, in the context of this thesis, the group will consider ‘how practice culture and management practices contribute to stress and depression’.\textsuperscript{28}

An added layer of stress for many practitioners is the requirement that they combine their high-pressure work with a range of caring responsibilities and private commitments away from the office. These responsibilities and commitments are more likely to fall on women. Women were more likely than were men to report obligations to care for children, and to care for or assist other family members.\textsuperscript{29} They were also significantly more likely than their male colleagues to be responsible for household and domestic chores and also to report that, after work, there was no time to spend on


\textsuperscript{25} The work of the national anti-depression initiative BeyondBlue is one manifestation of this – see: &lt;www.beyondblue.com.au&gt; Also: Cooper, Cary l, ‘The Challenges of HRM in Managing Employee Stress and Improving Well-Being’ in Burke, Ronald J and Cooper, Cary L (eds), The Human Resources Revolution: Why Putting People First Matters (2006) 139.

\textsuperscript{26} See: Chapter 5, Section 5.3 The Price is Stress, p 5-8, at p 5-9 n 39.


\textsuperscript{28} Ibid.

\textsuperscript{29} See: Chapter 5, Section 5.4 Survival Strategies, p 5-11; esp Table 5.3: Inability to use coping strategies at p 5-13.
themselves.30

Growing numbers of male lawyers are expressing a wish to be more involved in family life. However, even where ‘parental’ leave policies exist in workplaces, both women and men report that they feel unable to utilise such policies.31 This creates a major disconnect between the fact that practitioners generally place great importance on their family lives, and that women (50.91 percent) and men (44.79 percent) rate quality time with family as their preferred coping strategy to manage stress.32

Chapter 3 of this thesis contains a detailed examination of the situation of women in the legal profession, both within Australia and in some overseas jurisdictions. It is clear from my research findings that the Queensland profession is experiencing similar difficulties and instances of discrimination and exclusion to those revealed elsewhere, particularly in other Australian jurisdictions. The decentralisation of Queensland’s justice delivery, the split profession, and inquiries into the profession,33 as well as issues such as firm size and any rural-regional divide,34 appear to have no real impact on the issues canvassed in this research.

The marginalisation of women lawyers generally, the exclusionary factors operating within many legal workplaces against those who are ‘other’ than a ‘malestream’ norm, the lack of workplace flexibility to allow all practitioners an opportunity to balance legal and private lives, and the lack of understanding of the significance of the role of family in the success equation – all of these have been identified elsewhere. My research provides conclusive evidence that Queensland practitioners face similar difficulties. But, what is strikingly different is the ways in which Queensland women lag behind their Australian sisters-in-law to some extent in

30 Household/domestic chores women 40.91%, men 25.00% MW-U=4440.00 Z=-2.408 p=0.016; no time for self after work women 50.00%, men 31.25% MW-U=4290.00 Z=-2.720 p=0.007.
31 This was significantly more so for women, but the numbers of men were still substantial – see: Chapter 5, Section 5.9 Rhetoric and Reality, p 5-36, esp Table 5.6: Q11 – Workplace policy availability and accessibility at p 5-41.
32 See: Chapter 5, Section 5.4 Survival Strategies, esp Table 5.2: Q17 – Coping strategies used by practitioners, p 5-11.
33 See: Chapter 1, Section 1.4 Significance with a Queensland focus, p 1-8, esp 1-10.
34 See: Chapter 3, Section 3.2 A Snapshot of the Queensland Profession, p 3-2ff.
numbers, but particularly in terms of participation in professional governance.\(^{35}\)

Significantly, my research highlights particularly issues facing women within the profession. The research also underscores the past failure of the Queensland profession to engage in detailed research within the profession, and then move towards (research-based) policies and initiatives to redress some of the difficulties and concerns that beset many practitioners. Problems of systemic and structural discrimination, a lack of understanding of modern workplace practices around flexible ways of working and organising work, and a highly limited and limiting view of what constitutes achievement or success in the practice of law and how that is rewarded – all of these are ‘added in’ to the pressure-cooker world that is the solicitor’s workplace.

What is apparent is the strength and conjunction of views expressed by research participants. There was no compelling contrary body of evidence, no significant numbers of participants with opposing views, about the state of their profession. Statistically significant numbers of practitioners are behind my research findings, and those numbers were reinforced and confirmed by interview participants – both in the survey and stakeholder groups. I do not suggest that every solicitor in Queensland shared these views, but extensive opportunities were provided in both the survey instrument and the semi-structured interviews for opposing views to be clearly heard.\(^{36}\) Moreover, the response rates to both survey and interview phases, the time commitment of solicitors to the project, the ongoing interest of practitioners, gives a strong efficacy to the findings.

As I have said, the empirical findings from my research repeatedly echoed findings from studies conducted in other Australian jurisdictions as well as in some overseas jurisdictions. One notable ‘exception’ is perhaps my findings about success.\(^{37}\) I was unable to locate research conducted elsewhere that was on all fours with the questions I posed to participants both in the survey and interview phases of the project. This is

\(^{35}\) See: Chapter 3, Section 3.7 Sisters-in-Law, p 3-22, esp Table 3-7: Women in practice and professional governance, p 3-23.

\(^{36}\) See: Appendices 1, 2 and 3.

\(^{37}\) See generally: Chapter 6, esp success framework set out in Diagram 6.1: Signs of success identified by Queensland solicitors, at p 6-18.
an area that needs further research. This is particularly so in view of findings by
Deborah Rhode that suggest success equates to a profit priority.⁴⁸

In the next three Sections, I will briefly review some central research findings from
the key areas of inquiry.

7.3 NOT ALL SOLICITORS ARE CREATED EQUAL
My research demonstrates that discriminatory, exclusionary and outmoded practices
persist within Queensland legal workplaces. Moreover, the 2003 survey carried out by
the Equalising Opportunities in the Law (EOL) Committee of the Queensland Law
Society found that some 15 percent of respondents had been directly affected by
workplace discrimination, with nearly 600 incidents of workplace discrimination
disclosed.³⁹ These practices disproportionately affect female practitioners, who are
more likely than their male colleagues to experience prejudice and discrimination in
their daily practice of the law.⁴⁰ Where unfair treatment does exist, there is often no
assistance available. Less than 60 percent of female and male practitioners in my
research reported the availability of workplace policies to counter discrimination and
sexual harassment,⁴¹ and less than 45 percent reported that their workplace had a
grievance policy.⁴²

There was an even lower availability of workplace help and support in the shape of a
nominated person to approach confidentially with any problems about work, or about
ability to cope with work demands and pressures, or to discuss career plans.⁴³ Where

³⁸ Rhode, Deborah L., *In the Interests of Justice – Reforming the Legal Profession* (2000) 31-33. See:
Chapter 6, Section 6.3 How the Solicitors See It, p 6-8, esp p 6-12 n 47.
³⁹ See: Hutchinson, Terry (with Heather Skousgaard, Erin Kay and Gareth Ridall) *Queensland Law
Society Equalising Opportunities in the Law Committee 2003 Membership Survey: The Report*
(December 2006); Hutchinson, Terry and Skousgaard, Heather, ‘Inside the Queensland legal workplace …’
(2007) 27 (7) *Queensland Law Society Proctor* 30 (the survey to all Queensland practitioners
⁴⁰ Chapter 4, Section 4.7 Inside Legal Workplaces, p 4-37, esp Table 4.3: Q14 – Problems at work,
p 4-37.
⁴¹ Anti-discrimination policy available (women 59.63%; men 53.19%); and sexual harassment policy
(women 57.55% and 55.32%) – see: Chapter 4, ibid, esp Table 4.4: Q14 – Availability of workplace
policies, p 4-39.
⁴² Grievance policy available (women 37.96%; men 44.68%) – see: Table 4.4, above n 41.
⁴³ Nominated person available (women 43.12%; men 32.61%) – see: Chapter 4, above n 40, esp Table
4.5: Q14 – Availability nominated person, p 4-41.
a nominated person did exist, nearly 40 percent of women and about one-third of men
said they would not approach that person. The reasons for this centred on lack of trust
in the confidentiality of the grievance system or the individual nominated person, and
also a fear of repercussions.44

This fear of repercussions and a perceived inability to speak out were recurrent
themes throughout my research. This is also in accord with wider employment
research. The Federal Sex Discrimination Commissioner has pointed to Commission
research that found many employees were afraid to complain of sexual harassment,
citing some 15 percent of those who didn’t complain as being ‘fearful of the negative
impact on themselves’, with 21 percent expressing ‘a lack of faith in the complaint
process’.45 Solicitors demonstrated by their response rate to my survey,46 their
commitment to my research interviews,47 and by the high response rate to the EOL
Committee survey48 that they saw the issues raised as important to them. They were
quick to take advantage of confidential opportunities to disclose their concerns and to
report specific incidents of discrimination and harassment,49 as well as circumstances
of inequitable work practices related to workplace recruitment, work allocation,
promotion and the like. In my research interviews there were many variations on the
theme of the necessity to keep one’s head down and not make waves.50 Solicitors also
have no recourse to a confidential and transparent complaint system outside their own
workplaces as there is no such process in place through the Queensland Law Society.

Women were significantly more likely than their male counterparts to report less
favourable workplace treatment in a range of circumstances from administrative and
support staff, from other lawyers in their workplaces, and from other outside

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44 See: Chapter 4, above n 40, esp Table 4.6 Approachability of nominated person, p 4-41.
45 Reported in: Schwab, Peter (ed), ‘Fewer people complain of harassment but ignorance, and fear,
grows’ (2008) 315, 6 November Discrimination Alert – newsletter on equal opportunity and workforce
diversity 1; also: Schwab, Peter (ed), ‘Warning for employers as one in three fear complaining’ (2008)
315, 6 November Discrimination Alert – newsletter on equal opportunity and workforce diversity 4.
46 A response rate of 40.73% of women surveyed, and 34.91% of men surveyed – see: Chapter 2, Sub-
Section 2.4.1 Survey, p 2-10, at p 2-12.
47 See: Chapter 2, Sub-Section 2.4.4 Semi-Structured Interviews, p 2-15.
48 See: above n 39.
49 I located only a single reported formal complaint of sexual harassment against a solicitor. This was
initiated by a client. See: Queensland Law Society Professional Standards Committee, Bi-Annual
50 See particularly: Chapter 4, Section 4.3 Keeping Their Heads Down, p 4-8ff.
professionals.\textsuperscript{51} It was only in their dealings with clients that women and men recorded they were treated with similar respect and co-operation. Both women and men felt their work was valued by clients, and both felt clients did not subject them to unreasonable demands or undeserved criticism or aggression.\textsuperscript{52}

These findings that suggest women come into their own in their dealings with clients are of particular interest when juxtaposed with findings from recent research carried out by Lyn Aitken and Francesca Bartlett under the auspices of the Queensland regulatory body, the Legal Services Commission. Since its formation the Commission has consistently observed that women are proportionately three times less likely than their male colleagues to be the subject of a formal complaint from clients.\textsuperscript{53} This raises a number of questions about ways of ‘doing law’ and ‘being lawyers’ and about what women might do differently from men. Although the researchers have posited the lack of numbers of women lawyers in the senior ranks of the profession as a ‘substantive’ reason for the fewer complaints,\textsuperscript{54} they are also exploring whether women lawyers are less at risk of complaint through particular practices specific to women.

This opens up exciting possibilities for what women may bring to their profession, and again reinforces the need for their voices to be heard, and their skills to be retained. It also strengthens the caution against relegating women to trite stereotyped roles that ‘fit’ some outdated expectations of how women should behave in line with acceptable (masculinist) societal roles such as mothers, goddesses, sisters or pseudo-

\textsuperscript{51} Refer: Chapter 4, Section 4.7 Inside Legal Workplaces, esp \textbf{Table 4.7.1:} Q10(1) – Perceived workplace treatment by administrative staff, p 4-43; \textbf{Table 4.7.2:} Q10(2) – Perceived workplace treatment by other lawyers, p 4-45; \textbf{Table 4.7.3:} Q10(3) – Perceived workplace treatment by other professionals, p 4-46; also the various tests for statistical significance are footnoted at p 4-43 to 4-46.

\textsuperscript{52} See: Chapter 4, ibid, esp \textbf{Table 4.7.4:} Q10(4) – Perceived workplace treatment by clients, p 4-47 Note: women were more likely than men to report they did feel they were subject to unreasonable client demands, but this was not a statistically significant result.

\textsuperscript{53} The Commission was established in 2004 – refer: Commission website \texttt{<http://www.lsc.qld.gov.au>}. See: Chapter 3, Sub-Section 3.7.5 Queensland, p 3-34, esp n 136; also see: Chapter 4, Sub-Section 4.4.1 The Madonna, p 4-16, esp 4-18 at n 66 referencing the Aitken and Bartlett work.

\textsuperscript{54} Aitken, Lyn and Bartlett, Francesca, ‘Gender, Care and Complaints – Can we say women lawyers are more caring?’ (Seminar, Socio-Legal Research Centre Griffith Law School, Brisbane, 20 October 2008).
males. The caring role that many women were willing to appropriate to themselves in my research may need to be re-examined and re-valued as a positive model for the profession for all practitioners. Many women, and numbers of men, saw women practitioners as not only more ethical and more likely to have a strong sense of social justice, but also as more in touch with feelings of others (including clients and staff), and better at communicating (with clients and staff). I suggest these attributes provide a positive model for client interaction and general conduct as a practitioner, and it seems to be a model to which clients respond favourably.

Where female solicitors are viewed through stereotypical lenses; dismissed as serious partnership contenders; do not enjoy an open and ongoing dialogue (within their firms and with the professional peak body) about flexible and different ways of working; and have family and caring obligations dismissed as women’s issues, those women become increasingly marginalised within the profession. Meaningful career paths and promotion options may be blocked or side-tracked. Women, and increasingly men, may find it impossible to meet both professional and private obligations within their current workplace arrangements. Many women quit the profession. Others may be increasingly isolated and unsupported within their firms. Some will bear the full force of the ‘exclusionary effect’ and feel they have no option but to leave their chosen career when they reach ‘exclusionary overload’.

Upholders of the prevailing culture unthinkingly act to reject those who might be different, to adopt stereotypes without questioning, and to include only those made in their image. Women’s schooling, interests, sporting activities, potential for child

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55 See: Chapter 4, Section 4.4 Kanter’s Role Traps, p 4-15 ff; esp Table 4.2: Development of Kanter’s role trap typology for professional/legal women at p 4-28 ff and Table Note xvii – role descriptions from my research interviews.

56 See particularly: Chapter 4, Sub-Section 4.4.1 The Madonna, p 4-16, esp Table 4.1: Q20 – Who is better at workplace functions? at p 4-17 – these findings as between women and men were statistically significant and the tests of statistical significance are set out fully in footnotes at p 4-17, 4-18.


58 See: Chapter 3, Sub-Section 3.7.5 Queensland, p 3-34, esp Table 3.8: Q23 – Negative views of legal workplaces at p 3-36.

59 See: Chapter 4, Section 4.9 Black Sheep and Millstones, p 4-56, esp Table 4.8: Exclusionary effect of workplace mobbing-style factors at p 4-60.

60 Ibid generally, and Diagram 4.1: Exclusionary indicators in legal workplaces at p 4-62.
bearing, and often far greater family and caring responsibilities, continually mark them as different from the male norm. Research participants endeavoured to be scrupulously fair in their comments and recollections. Many suggested that any discrimination, any gender bias, was not intentional.61 Some also struggled with the covert, underground or subtle nature of discriminatory practices, such that you can’t actually point your finger at them and say “this is what’s happening and this is discriminatory”.62

7.4 EVERY WORKING WOMAN NEEDS A WIFE
Many women in the course of interviews wished they had some form of personal or household help that would relieve the pressure of their double shift.63 I have referred in the introduction of this Chapter to the ways practitioners are responding to the stress of their professional work combined with pressures and obligations on them in their non-work world. Men were significantly more likely than women to report they were not affected by pressure (although these numbers were small for men and women), and that they did use coping strategies to manage pressure.64 It was overwhelmingly women who were time poor when it came to utilising some coping or de-stressing strategies outside of work.65

This divide became more acute when practitioners were confronted with a domestic emergency or crisis during working time. It was women, rather than men participants in my research, who recorded that their response to a domestic crisis was to take time away from their work anyway (and worry about the office reaction), or to call on family members or friends. Women were statistically significantly more likely than were men to take time ‘disguised’ as legitimate leave (such as holiday or sick leave);
to just keep working and worry about the crisis; or to require their spouse or partner to take time from their work so that the solicitor was able to keep working apparently unimpeded by domestic issues.66

Men were significantly more likely than women to report that flexible or emergency leave was ‘not an issue’.67 While this reinforces the fact that women are disproportionately disadvantaged by the demands of the domestic sphere, both women and men are struggling with the competing demands they face on a daily basis. It was apparent to me from my research that women were reluctant to speak out publicly or to raise workplace flexibility in general professional debate, but it was also clear that some men feel even more constrained about resisting the *blokey culture* and the traditional ways of operating68 within the legal profession.

Those traditional ways encompass not only the business of men’s clubs, sporting connections and old school ties,69 but also the long hours and the unchallenged dedication to a client service ethic70 that renders the solicitor powerless to adopt alternative ways of working. This in turn encompasses the ‘ideal’ of the unencumbered benchmark (male) practitioner who has no priorities other than the client and an associated round of entertainment, networking, and marketing that epitomises a practitioner on the way to the top, on the partnership promotion track.

For these lawyers, home life is viewed as a support for work life and it is work life that is accorded priority.

Where women work within a professional culture that dismisses domestic obligations as a woman’s problem that is irrelevant to working life, that culture is prejudicial to women and their aspirations. It also makes it extremely difficult for any practitioners to enjoy a balanced and healthy lifestyle, or for practitioners to participate in a dialogue about alternative ways of working and options for genuine workplace

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66 See: Chapter 5, esp *Table 5.4: Q12 – Domestic emergency/crisis response at work* at p 5-16.
67 See: Chapter 5, esp *Table 5.5: Q12 – Flexible/emergency leave not an issue* at p 5-16 (men 25.00%, women 11.82%).
68 As typified by: I(m)30 [man – 30s – employed solicitor – metropolitan]; I(m)41 [man – 30s – employed solicitor – regional].
69 See: Chapter 3, Section 3.6 A Question of Culture, p 3-16ff.
70 See: Chapter 5, Section 5.6 In Search of Lost Time, p 5-18ff; Section 5.7 ‘If We Don’t, We Lose the Client’, p 5-25ff.
flexibility. There is no doubt that many men also feel constrained by a traditional culture that not only privileges men within the profession, but that also privileges a particular kind of man and a traditional male way of working. My research disclosed that practitioners generally have a limited understanding about flexible options and ways of managing flexibility and change.

The other critical issue to arise from my research in terms of flexibility is the fact that the gap between workplace policy availability and policy accessibility was wide, and in many cases rendered policy ‘availability’ a sham. Many legal workplaces do have policies in respect of flexible work practices, and in relation to workplace equity issues.\(^{71}\) As I have outlined in the thesis, many practitioners spoke of difficulties in accessing flexible policies. They perceived, and experienced, negative reactions and feedback from managing partners or senior solicitors, and sometimes from their peers, if they sought to work in less rigid ways. This was most pronounced in the case of unpaid parental leave where a considerable proportion of women (84.27 percent) said this policy existed in their workplaces, but only half (50.67 percent) said they could utilise it. A little over half (55.81 percent) of the men recorded the existence of such a policy, with 35.42 percent reporting they could utilise it.\(^{72}\)

It was evident during my research that ‘flexibility’ was limited to a shortened working week or some elasticity around starting and finishing times, but often with responsibility for the same (pre-flexible-schedule) client and file load. For legal professionals, very little was being tried in respect of flexible modes such as permanent part-time work, school term working, organisation-based or supported childcare, career breaks, telecommuting, and job sharing.\(^{73}\) Certainly, very little seemed to be done, or even discussed, around what concomitant changes should be implemented to ensure that flexible workers carried appropriate workloads, and retained defined and meaningful career paths and promotion options.

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71 ‘Workplace equity issues’ includes discrimination, sexual harassment, bullying and mobbing.

72 See discussion of policy availability and accessibility in Chapter 5, Section 5.9 Rhetoric and Reality, p 5-36ff, esp Table 5.6: Q11 – Workplace policy availability and accessibility, at p 5-41.

73 See: Chapter 5, Section 5.8 What’s In a Name? p 5-29ff. This contrasts sharply with the Victorian position where protocols are freely available in relation to part-time work, flexible working hours, working from home, and job sharing. Developed by Victorian Women Lawyers – see website at <www.vwl.org.au>
7.5 HONOUR AND COMMITMENT

Solicitors spoke passionately of their commitment to the practice of law and their belief in an honourable profession. Some shared stories of others who had left private practice and who had felt an acute sense of loss of, and sometimes betrayal by, their chosen career. Some research participants who had left, or were contemplating leaving legal practice, reported an actual grieving process. Some spoke of a sense of failure.

For many women, it was clear that, despite ample human and social capital, they would never have sufficient social capital to move freely in the traditional male legal world. As such, gender differences consistently manifested in solicitors’ access to a range of workplace benefits and promotional opportunities, regardless of the ‘comparable’ investments women and men may have made in their careers. This, in turn, reinforces the need to maintain a gender narrative in organisational research generally, and in legal professional research in particular.

Success is a complex and contested notion. Some research participants saw women and men as wanting the same things from a legal career. Others saw them as seeking very different goals. However, an examination of the assumption that women freely choose different priorities and goals from men exposes the complexities and constraints around that notion of choice. Not only may women’s choices be curtailed by an inability to combine career and caring responsibilities, there may be a number of structural barriers within their workplaces. Women were significantly more likely than their male colleagues to report a lack of equal access to salary levels and benefits, promotion and partnership opportunities, training and development, and invitations to professional activities.

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74 See: Chapter 3, Section 3.6 A Question of Culture, p 3-16ff; discussion of capital theories, esp pp 3-37 to 3-42; also: Chapter 6, Section 6.8 A Meaningful Offer Capable of Acceptance, p 6-26, esp pp 6-29 to 6-31.
75 Chapter 3, above n 74, esp pp 3-37 to 3-38 re Hagan and Kay gender stratification theory. Also: survey findings set out in Chapter 6, Graph 6.2: Q13 – Access to benefits, p 6-27.
76 See: Chapter 1, Section 1.3 Maintaining a Gender Narrative, p 1-6ff.
77 See: Chapter 6, Section 6.2 A Contested Notion, p 6-3ff.
78 See: Chapter 6, Section 6.8 A Meaningful Offer Capable of Acceptance, p 6-26, esp Graph 6.2: Q13 – Access to benefits, at p 6-27. The statistical tests for significance are footnoted at p 6-27.
Women were also less likely than men to identify themselves as successful,79 and more likely to express (independently of my research questions) a lack of confidence in their abilities. The irony here is that in terms of stereotypical views of women, those who display confidence may be penalised as ‘tough bitches’.80 Women’s reported lack of confidence needs to be contextualised. Many women are still seen in terms of outdated and caricatured roles. They are more likely to be affected by discriminatory and exclusionary work practices. There is a lack of senior women to provide role models or mentors.81 Many practitioners, women and men, report a gap between flexible policies on a firm’s website and the ability to freely take up those policies. The culture of long hours, billable hours, and twenty-four seven client service is rarely compatible with family and caring responsibilities. It is women who are more likely to feel alienated from that culture, and unable to ‘succeed’ within it.

Women and men generally saw themselves as successful if they have the respect of their peers, their clients, and the public; if they maintain honesty and strict ethical standards; and if they lead healthy and happy lifestyles; while still working hard and achieving their personal goals.82 Women and men wanted similar things in terms of their expressions of the characteristics of success, even though they reported differences in the barriers and constraints they encountered.

Women were significantly more likely than men to see working co-operatively with others, and being open to change and new experiences as important success attributes. These views expressed by women provide fertile ground for debate about future models of work and of success, especially when this is combined with women’s greater likelihood of working within an ethic of care as suggested by recent

79 See: Chapter 6, Section 6.3 How Solicitors See It, p 6-8ff, esp Table 6.1: Q22 – Individual view of success, p 6-9.
80 Refer: Chapter 4, esp Table 4.2 Development of Kanter’s role trap typology for professional/ legal women at p 4-28. See also: Phelan, Julie, Moss-Racusin, Corinne A and Rudman, Laurie A, ‘Competent Yet Out in the Cold: Shifting Criteria for Hiring Reflect Backlash Toward Agentic Women’ (2008) 32 (4) Psychology of Women Quarterly 406.
81 Some men at least have expressed a definite reluctance to mentor women in the way they would mentor junior men, for fear of being accused of sexual harassment or inappropriate behaviour – see: Chapter 4, Section 4.7 Inside Legal Workplaces, p 4-37, esp at p 4-48ff.
82 See: Chapter 6, Section 6.3 How Solicitors See It, p 6-8ff, esp Table 6.2: Q21 – Characteristics that best define success, at p 6-10; and Graph 6.1: Q21 – Characteristics that best define success, p 6-12.
research. My research showed that individual practitioners continue to espouse high ideals of public service, but many feel disillusioned. High stress levels and reported incidences of depression make ‘success’, however it may be defined, unattainable for many. Structural barriers continue to prevent women accessing similar benefits and opportunities to their male counterparts.

Women and men nominated essentially the same individual skills as critical for recognition as a good lawyer by peers, clients and the public. The various insights provided by research participants allowed the development of a success framework. The framework operates on a number of levels, incorporating professional and personal spheres as well as internal and external factors within those spheres. The framework emphasises the intricacies of the notion of ‘success’. It reinforces the need for more flexible ways of working and for a culture that is inclusive, equitable and respectful, because it is only then that each practitioner is truly able to achieve her/his full potential.

I argue that management expertise is one of the key tools for implementing more equitable and flexible workplaces and for exploring other ways of organising solicitors’ work. In other words, ‘a thorough understanding of law and business is now critical to success’. Modern management skills and knowledge are essential if workplace and professional cultures are to shift. However, some 40 percent of the women and men in my research described their workplaces as old fashioned rather than innovative. When the attributes needed for recognition as a good lawyer were factored into the success mix, ‘effective management skills’ was only the tenth most likely attribute to be ranked highly by women, and the thirteenth most likely for men.

Not only do practitioners need management tools to assist them to understand people

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83 Specifically research by Bartlett and Aitken – see: above n 9, n 53, n 54.
84 See: Chapter 6, Section 6.4 Individual Skills and Individual Voices, p 6-13ff, esp Table 6.4: Q19 – Attributes needed for recognition as a good lawyer at p 6-14. (The one significant difference was women were more likely to rank ‘logical thought and clear expression’ in their top ten attributes.)
85 See: Chapter 6, Section 6.5 A Success Framework, p 6-15, esp Diagram 6.1: Signs of success identified by Queensland solicitors, at p 6-18.
87 See: Chapter 3, Sub-Section 3.7.5 Queensland, p 3-34, esp Table 3.8: Q23 – Negative views of legal workplaces, at p 3-36.
and change, and to implement new policies and practices, but management tools and skills are also integral to the process of overcoming resistance to change and to ‘unlearning’ outdated and ineffective ways of operating. ‘Unlearning’ has only gained relatively recent recognition in the academic management literature. One researcher argued that in the context of ‘competing demands and rapidly changing environments … individuals will need to be skilled in unlearning or letting go of past practice and behaviour’.88 There is real advantage in understanding that organisations with only learning abilities ‘build walls around them, and grow defensive … To learn, unlearn, and relearn is the organizational walk: development comes to an end when one of those legs is missing’.89

The importance of management skills was a significant omission from success characteristics and attributes detailed by my research participants during interviews.90 I now consider the issue of legal workplace management in more detail.

7.6 THE IMPORTANCE OF MANAGEMENT
One solicitor interviewed during my research described the fundamental importance of management to the modern legal practice because: the issue is managing it as a business and seeing it not just as the exercise of your legal skills. Actually you’ve got to see it as a business otherwise you’re going to fail.91 Skills are needed to operate effectively as a business, including the skills to manage the people within it. I agree with the view that –

more competitive advantage is diminished, more productivity is lost, and more time is wasted by incompetent handling of normal human interactions than by any other cause. Conversely, a real competitive edge, increased productivity and effective time management can be gained if we practice better people management skills … 92

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90 See: Chapter 6, Diagram 6.1, above n 85.
91 I(m)31: 20 [man – 30s – employed – metropolitan].
Although management was not identified as a key issue, solicitors participating in my
research were keenly aware of high professional turnover. They saw professionals
being lost at an alarming rate. Some lamented the unnecessary high turnover –
moving around – unsettledness.93 Some spoke of the loss of skilled practitioners in
terms of really good people [who] leave and they’ll always just keep leaving.94 Some
believed it was not difficult to attract professional staff because you can get them
easily enough, but [the firms] can’t keep them – retention is the issue.95 Others
accepted that a fairly common factor in the industry nowadays is a big churn factor,
turnover, particularly professional staff.96

Solicitors operate in a business environment. Private practice demands more than
legal knowledge, however expert that might be. One Queensland Law Society
President commented that ‘some of the best and brightest lawyers who shine in their
profession are sometimes not overly blessed with management skills’.97 For most
practitioners their only avenue to acquire management skills is through the
Queensland Law Society Practice Management course when they seek to enter into
partnership or become sole owners of a legal practice. Only one solicitor I
interviewed felt that the Practice Management course was useful. Practitioners were
generally less than laudatory, with one senior principal commenting: my partners did
the Practice Management course and I can’t see anything they learned there
[especially regarding how] to treat people.98 Senior solicitors who head work units or
have some supervisory responsibilities for other staff are not necessarily partners.
There may have been no requirement for them to undertake even limited management
training, particularly in the realms of managing people, creating equitable workplace
cultures, and effective interpersonal communication. Also, there are many senior
solicitors in partnership roles who became partners before requirement to undertake

93 I(m)72: 8-9 [man – 40s – principal – metropolitan].
95 I(f) 80: 6 [woman – 30s – employed – regional].
96 I(m)35: 1 [man – 30s – partner – metropolitan].
97 Mahon, Megan, ‘President’s Page’ (2008) 28 (9) Queensland Law Society Proctor 6. I have outlined
in Chapter 6, at p 6-15, the relatively low rankings solicitors gave to ‘effective management skills’ and
related attributes in response to survey Q19.
any form of management training.99

In order to do something well, I suggest that we need to possess the means, the capacity and the will to carry out the appointed task. Most solicitors when thrust into management roles have the will, or the motivation, to perform at their best. But, the means to do so is grounded in theoretical knowledge, and the capacity lies in a particular set of skills. Management theory and skills are elements that must be learned, just as legal theory and skills are learned.100

Some practitioners work in very large firms that employ in-house experts in a range of fields, including human resource management. However, partners in these firms remain the business and equity owners who set the policy directions, and who make critical decisions affecting staffing and work practices. In these firms, the human resource experts rarely have a seat at the boardroom table. In some cases they may have no decision-making powers, and may be restricted to implementation roles only. One solicitor was quite clear that it was not human resource managers who drove decisions but the attitude of the partnership team in a particular firm.101

Where workplace equity policies did exist in legal practices, it was evident from my research that solicitors within a firm could have different understandings of what policies existed and how accessible they might be. While there were exceptions, it seems that for most legal firms with policies, there was little in the way of regular promulgation and staff training, and almost never any formal evaluation and feedback. Sometimes up-to-date policies were not supported by a credible grievance procedure or a workplace culture that encouraged solicitors to voice concerns without

99 The origins of the course are found in 1988 rules passed by Queensland Law Society Council, recognising ‘many of the problems solicitors encountered in the running of their practices stemmed from the practitioner’s lack of management training’ Queensland Law Society, Find the Best Way – Practice Management Course Guidelines (2006).
101 It(f)73: 19 [woman – 30s – former associate, now government – metropolitan]. I encountered (while in professional practice) a general sense of unease with non-lawyer management roles in law firms. This is supported by material in the Practice Management Course which refers to the trend for bigger firms to employ Non-Lawyer Managers (NLMs) and the ‘high degree of failure’ associated with such appointments. The course materials suggest possible causes for failure include ‘failure to bring the NLM into the “inner circle” of decision-making with regard to factors affecting their province. Related also to this is failure to give the NLM sufficient authority and backing’ see: Queensland Law Society, Practice Management Course materials (2006), qpmc man u05, 22.
penalty. A Queensland Law Society report as part of the Professional Ethics Project acknowledged ‘bulllying and harassment are often-mentioned complaints of younger solicitors’ and recommended a policy ‘for dealing with harassment, bullying and general courtesy complaints against lawyers by lawyers’. Attempts at introducing equity or flexible policies and practices seemed ad hoc and ill thought out, as though they were a response to a particular scenario without consideration for wider implications and possibilities.

The Practice Management Course performs a vital role in areas of trust account operation, risk management, and ethical responsibilities. But, its ability to train solicitors to become expert people managers is understandably limited. The current course content is silent on any issues of workplace equity, including ways to promote equality of women and men within private legal practice. There is no information about basic workplace policies and grievance procedures. There is no information about how to manage workplace related stress and depression. There are no practical guides, checklists or model policies to enable solicitors to consider the implementation of flexible workplace practices within their own firms. When the provision of a new course was put out to tender by the Law Society in 2003, the Society imposed no requirement that issues of workplace equity should be covered in the new course materials.

The Queensland Law Society website contains a brief paragraph that declares discrimination and sexual harassment unacceptable, but currently does not support this with detailed policies, references or guides for solicitors in respect of these important issues. The Practice Management course (as at 2006) refers to the challenge

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103 Queensland Law Society, Practice Management Course materials (2006). The Management Unit has six sections: 1. The nature of professionals and professional firms; 2. Management and strategy; 3. Systems in the legal office; 4. Information Technology; 5. Organisational structure; 6. People management. The people management unit encompasses: improving quality and effectiveness of communication; understanding principles of and barriers to effective delegation; and, understanding way people behave by understanding the leader’s role. I suggest the focus is on a hierarchical top-down management style.
104 In the tender documents, the Society’s course overview listed the fourth course module as ‘General Practice Management – Planning, organising, staffing, and controlling, cash flow, time management and decision making …’ (Queensland Law Society, ‘Request for Tender for Provision of Practice Management Course delivery for the Continuing Legal Education unit of the Queensland Law Society’ 7 July 2003, 5.)
of managing and retaining ‘younger people entering the profession’ because of their ‘values and priorities’. There is no mention of the increasingly significant issue of larger numbers of women graduating from law, eschewing private practice for other fields, or entering private practice but leaving after a few years.\textsuperscript{105}

Solicitors are fully aware of their limitations as managers. In my research they identified a lack of training as part of the problem, especially for law firm partners: you become a partner and you’re supposed to manage all these people, but how would you? It’s like asking a bricklayer to rewire your house.\textsuperscript{106} There was a broad consensus that lawyers are not good people people as such;\textsuperscript{107} and that the legal education system absolutely [did] not equip lawyers to be managers.\textsuperscript{108} One principal wanted to see mandatory management training as part of law courses so that lawyers had exposure to some basic management principles. A number of solicitors referred to the difficulties they encountered when called on to ‘take their turn’ as staff partner – a role for which they declared themselves to be ill-equipped, and which engendered a feeling of dread.\textsuperscript{109}

The Law Society does try to fill some of these ‘gaps’ through the range of courses offered as part of ongoing and compulsory professional development. A management consultant writing in Proctor urged the first factor to mark a successful legal practice in the new millennium as ‘employment of management professionals to provide leadership and support to partners and to relieve partners of most administrative and firm management responsibilities. … Despite their best efforts, the reality is that partners will generally prove to be ineffective in these roles and that should come as

\textsuperscript{105} See management texts that herald new styles of collaborative working within equitable workplaces: Burke, Ronald and Nelson, Debra L (eds), Advancing Women’s Careers: Research and Practice (2002); Carlpio, James, Andrewartha, Graham and Armstrong, Humphrey, Developing Management Skills – A comprehensive guide for leaders (2005); Hackman, Michael Z and Johnston, Craig E, Leadership – A Communication Perspective (3\textsuperscript{rd} ed, 2000); Kanter, Rosabeth Moss, ‘From Cells to Communities – Deconstructing and reconstructing the Organization’ in Gallos, Joan V (ed), Organisation Development (2006) 858; Sinclair, Amanda and Wilson, Valerie, New Faces of Leadership (2002); Stone, Raymond J, Human Resource Management (5\textsuperscript{th} ed, 2005).

\textsuperscript{106} If\textsuperscript{44}: 24-25 [woman – 30s – senior associate – metropolitan].

\textsuperscript{107} If\textsuperscript{43}: 7-8 [woman – 30s – principal – regional].

\textsuperscript{108} If\textsuperscript{48}: 18-19 [woman – 40s – consultant – metropolitan] (emphasis hers).

\textsuperscript{109} If\textsuperscript{52}: 22-24 [woman – 40s – principal – regional]; If\textsuperscript{55}: 15-18 [woman – 50s – consultant – regional].
no surprise. Their expertise lies elsewhere’.  

Human resource management skills have been advertised as ‘soft skills’ – phraseology that many research participants saw as having negative, derogatory or unimportant connotations. The current lack of skill contributes directly to some of the human resource problems besetting Queensland solicitors in private practice. For many legal firms, there are problems at all stages of people management – getting people and keeping people, managing diversity, managing conflict, creating and fostering an ethical and equitable culture, implementing flexibility, providing appropriate career and reward paths, and being responsive to the changing demographics and needs of employees. Most solicitors do not have the appropriate management skills. Many solicitors, especially those from small and medium size firms, still look to their peak professional body to provide assistance with, and solutions to, some of these daily practice dilemmas, and I will return to the role of the Society shortly.

At this point I turn to a consideration of some practical people management concepts and tools contributed by this thesis.

7.7 PRACTICAL TOOLS

The significant contributions of this thesis lie both in the extrapolation of existing work within broader management fields into a legal professional context, and in the development of new tools and models that can be applied in the management of a legal workplace. Extension of existing work is found specifically in the tracing and development of Rosabth Moss Kanter’s role trap typology that set out and exposed the continued use of stereotypical gendered models which continue to marginalise women as ‘other’, reduce their individual agency, and sideline many from mainstream...
legal work. An article in the *Harvard Business Review* supported the value of increasing awareness of the psychological drivers of prejudice towards women in the workplace, while also stressing the need to reinforce the lessons of raising awareness by what ‘managers say and do’.114

Similarly, the growing field of workplace mobbing provided a key theoretical framework for the identification and examination of a range of exclusionary factors at play in the professional lives of solicitors.115 This framework was then used for the development of a new model, which lists what I termed Exclusionary Indicators, and explores the ‘exclusionary effect’ or ‘overload’ that operates to force people out of legal practice when the number of Exclusionary Indicators at play becomes too great.116

Both the extended Kanter typology and the Exclusionary Indicators model are useful tools in raising awareness and prompting debate and discussion throughout the profession. They serve to introduce practitioners to the systemic problems that women can face within legal practice, as well as highlighting the extent and effect of entrenched and outdated attitudes and roles. Both can operate as a checklist or diagnostic tool to assess the extent of a discriminatory and exclusionary climate in a workplace (particularly if confidential feedback is sought on the presence of these attitudes and practices from staff at all levels). At the very least these tools can alert a solicitor-manager to the need for further expert advice and intervention.

Another original contribution to develop out of my research is the composite success framework that depicts the multi-dimensional factors intrinsic to solicitors’ understanding of success.117 The success framework draws on strong theoretical foundations around issues of ‘choice’ and ‘agency’ and resists the oppositional binary

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115 See Chapter 4, Section 4.9 Black Sheep and Millstones, p 4-56, esp Table 4.8: Exclusionary effect of workplace mobbing-style factors, at p 4-60.
116 See: Chapter 4, Section 4.9 Black Sheep and Millstones, p 4-56 ff, esp Diagram 4.1: Exclusionary indicators in legal workplaces, at p 4-62.
images that seem to direct women to either career or family. The success framework I have developed demonstrates the complex multi-dimensional nature of success. I have suggested that this framework is a starting point for future research. It also functions as a checklist from which to examine the various factors and elements that comprise the success mix and to consider those that may be adversely affected by the barriers to success I have identified throughout the thesis, particularly as brought together in the List of Exclusionary Indicators.

In this Chapter, I also challenge further the client service discourse and its profound hold on daily legal practice. I do this both through the development of the work of Damon Phillips on how management practices designed to assist women can in fact exacerbate their difficulties; and I adapt work by Janet Newman on cultural impediments to women’s progress in organisations to model a cycle of specific cultural barriers acting against women solicitors.

The range of practical tools in this thesis can be utilised by individual solicitors, legal firms and the professional peak body in the search for more flexible and equitable workplaces within which women and men can enjoy equal opportunity to succeed in their chosen profession.

In this concluding Chapter, I have stressed the importance of management skills and practices in the running of a flexible, equitable and discrimination-free legal workplace. I have identified in the thesis that many workplaces lack any, or any appropriate, workplace policies to manage for equity and flexibility. I have also posited that when ill-thought out and poorly informed policies are introduced they can cause additional problems and resentments. I argue that unintended consequences of new or changed policy directions can create major new problems within legal workplaces. This can result in the firm ‘giving up on’ their original initiative.

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118 See: Chapter 6 generally, and esp Section 6.2 A Contested Notion, p 6-3ff.
119 See: Chapter 5, Section 5.7 ‘If We Don’t, We Lose the Client’, p 5-25ff.
120 This Chapter 7, Section 7.7 Practical Tools, esp Table 7.1: Responses to unintended consequences of policy initiatives, p 7-23 ff.
121 This Chapter, Section 7.8 Legal Professional Culture, esp Diagram 7.2: Cycle of cultural barriers acting against women solicitors, at p 7-33.
American research has highlighted ways in which some management practices designed to assist women in fact exacerbate workplace inequities for women.122

These issues are also of increasing importance for men. Working from this research, I have presented a range of typical legal workplace issues, the likely firm response, and the unintended consequences that can ensue from that response. I have then posited some remedies or suggestions for how the unintended consequences might be managed at both the individual and broader organisational levels. These ways of managing both the initial problem and any consequential effects are set out in Table 7.1 on the following pages.

<table>
<thead>
<tr>
<th>POLICY/PRACTICE &amp; PURPOSE</th>
<th>POTENTIAL PROBLEM/S FOR WOMEN</th>
<th>POSSIBLE REMEDY/IES micro</th>
<th>macro</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Flexible work schedules:</strong>&lt;br&gt;To allow women to work less/different hours to accommodate child and family responsibilities.</td>
<td>*Workload may not change so women ‘make up’ time at home.  *Workplace may not admit other measures of achievement beyond hours worked.&lt;br&gt;*Resentment of other staff.</td>
<td>&gt;Focus on budget achieved in terms of hours worked.  &gt;Include other measures e.g. client feedback, mentoring, building firm profile, etc.  &gt;Implement workplace wide flexibility.</td>
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<tr>
<td><strong>Mentoring:</strong>&lt;br&gt;To improve women’s access to work and clients.</td>
<td>*Men may be reluctant to mentor (fear sexual harassment complaint) and not enough senior women to do so.  *Mentors not given credit for time away from ‘billable’ hours.  *Management may not lead by example.  *May still exclude important informal networks.</td>
<td>&gt;Set out clear expectations for mentors and mentees.  &gt;Implement equity policies and standards of respectful behaviour.  &gt;Demonstrate commitment of senior management.  &gt;Implement communication training.  &gt;Build in follow-up and evaluation</td>
<td></td>
</tr>
<tr>
<td><strong>Part-time employment:</strong>&lt;br&gt;To facilitate management of work and family responsibilities.</td>
<td>*Traditional promotion criteria not adjusted.  *Does not, without more, address underlying stereotype viz. part-timers (women) not serious about promotion.  *Becomes a ‘mummy track’ versus a ‘partnership track’.  *Assume employee should carry previous file load.</td>
<td>&gt;Review all policies.  &gt;Develop transparent and achievable criteria for promotion.  &gt;Educate all employees – from partners to support staff.</td>
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</tr>
<tr>
<td><strong>Parental leave:</strong>&lt;br&gt;To accommodate childbirth/adoption and care of young children.</td>
<td>*May return to find clients and/or files are gone.  *Could be viewed as poor performer if no resettling period built in.  *Promotion chances damaged short and long term.</td>
<td>&gt;Agree timelines and have clear systems in place to manage absences.  &gt;Ensure clear policies available to all parents.  &gt;Demonstrate whole of workplace commitment.</td>
<td></td>
</tr>
<tr>
<td>Policy/Practice &amp; Purpose</td>
<td>Potential Problem/s for Women</td>
<td>Possible Remedy/ies micro</td>
<td></td>
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<tr>
<td>---------------------------</td>
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<tr>
<td><strong>Alternative career paths:</strong> To provide genuine options to the ‘long hours in office’ route to success.</td>
<td>*Devalued by traditional stereotypes. *Options poorly understood. *Used as window dressing. *Do not address underlying problem for all practitioners of unrelenting work pressure.</td>
<td>&gt;Demonstrate commitment with clear policies. &gt;Clearly define titles and position descriptions. &gt;Attach high levels of recognition and remuneration. &gt;Make options open to all.</td>
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<tr>
<td><strong>Restructure to allow departmentalisation, strategic planning, involvement in firm committees:</strong> To institute more formalised procedures across ‘departments’ to offer women more opportunities for high-level participation (and participation with different groups to minimise individual subjective biases that may exist against women).</td>
<td>*Dependent on management skills of head of department/work unit. *Timing of meetings often impossible for those with caring responsibilities. *Where women in minority, their voices in departments/on committees lost in ‘group think’. *Visible presence of women may be further diluted.</td>
<td>&gt;Implement human resource management training and/or outside support for partners and department heads. &gt;Select appropriate and inclusive meeting times. &gt;Commit to inclusive management style. &gt;Tie in to other policies e.g. mentoring.</td>
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<tr>
<td><strong>Time costing:</strong> To ensure assessment of performance is proportional to actual hours worked/ costed.</td>
<td>*Assumption remains that the ‘committed’ worker is the visible worker. *Tendency to see bottom $$ line only.</td>
<td>&gt;Look to different ways of ‘reporting’ monthly income/billings so as to reflect true income per time worked or file load managed.</td>
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<tr>
<td><strong>Longer partnership tracks:</strong> To overcome assumption that if don’t ‘make partner’ by certain age/stage then not a serious contender.</td>
<td>*Belief no need to change as it’s a ‘woman’s problem’. *May be more honoured in breach. *Too easy to claim other ‘reasons’ for refusing partnership.</td>
<td>&gt;Tie to alternative career paths as genuine ‘stages’ towards partnership. &gt;Actively mentor those who aspire to partnership regardless of their other non-work commitments. &gt;Look to interim period for phasing out traditional partnership and remuneration levels, with view to effecting real change in policy and practice.</td>
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</tbody>
</table>
Management of different needs and expectations must operate at three levels to be successful. Firstly, there must be a strategic recognition that difference and diversity are critical for success. (This will involve a commitment to an inclusive and ethical culture, and I will specifically consider the issue of culture in the following Section.) Secondly, practices and structures to facilitate diversity in the workplace need to be formulated at the managerial level. Thirdly, practices and structures need to be implemented at the operational level.\textsuperscript{123}

The formulation and implementation of organisational measures designed to enhance equity, flexibility, and career advancement, require a staged process of introduction to be successful. The process needs to ensure problems are clearly understood, unintended consequences can be identified and managed, senior management is committed, staff are informed and trained, and there is an ongoing system of meaningful feedback and evaluation. Drawing on all these elements, I have developed a practical model for the introduction of workplace policies. The model emphasises the need for a continuous management process and the importance of sound research of the issues and a consideration of unintended consequences in any policy implementation or change. The process is set out in Diagram 7.1 on the following page.

Diagram 7.1: Model for introducing new workplace practices

1. IDENTIFY STAKEHOLDERS - RESEARCH THE ISSUES - CONSULT WIDELEY - BE OPEN TO NEW IDEAS - LEAD FROM THE TOP - MANAGE FOR DIFFERENCE (may not be 'one size fits all')

2. IDENTIFY ISSUES – IDENTIFY CAUSES

3. DEVELOP SOLUTIONS/STRATEGIES

4. LOOK FOR UNINTENDED CONSEQUENCES – REFINE APPROACH

5. IMPLEMENT STRATEGY

6. PROMULGATE / TRAIN / PROMOTE & MODEL COMMITMENT

7. FEEDBACK & EVALUATION (ongoing and transparent)
I do not suggest that the mere acquisition of management skills provides some simple panacea for problems within private legal practices in Queensland, even where management is properly understood to mean management in a collaborative and cooperative sense, with a focus on the health and wellbeing of all members of the organisation. Several steps are required, including: a recognition of problems, the application of management expertise to workplace policies and practices, and a long-term strategic commitment to changing culture. This latter is the most intractable.

7.8 LEGAL PROFESSIONAL CULTURE

Acquisition of new management skills will not of itself change culture. There must be a commitment at all levels of the profession (individual practitioners, law firm management, the peak body) to shift to an inclusive and equitable culture. Management techniques may effect changes in formal practices and procedures, but will not necessarily shift ‘a mindset of cultural values’. It may be that only a particular approach (e.g. an affirmative action approach to equity management) will


It is beyond the scope of this thesis to examine, but the contemporary marketing and ‘branding’ of many large national, and international, law firms invite comparisons with work by Margaret Thornton on the shift from ‘equal employment opportunity’ to ‘diversity’, and on managerialism and the production of organisation members as neo-liberal subjects. For example, see: Thornton, Margaret, ‘Where are the Women? The Swing from EEO to Diversity in the Academy’ (Working paper #22, Australian National University, 2008); Thornton, Margaret, ‘Feeling Chilly (Again) In the Legal Academy’ (2003) 18 *Australian Feminist Law Journal* 145. The fact there are legal firms and groups within firms that prosper without resort to ‘corporatisation and aggressive managerialism’ demonstrates there are other ways of ‘doing law’ and ‘being lawyers’. See: Thornton, Margaret, ‘Neoliberal melancholia: The case of feminist legal scholarship’ (2004) 20 *The Australian Feminist Law Journal* 7.

8. IDENTIFY PROBLEMS – LOOK FOR UNINTENDED CONSEQUENCES – REFINE STRATEGIES / DEVELOP NEW SOLUTIONS TO SUIT INDIVIDUAL WORKPLACE – BE WILLING TO ‘UNLEARN’ OLD WAYS – MAKE ‘TRIAL’ PROGRAMS MEANINGFUL – UNDERSTAND THIS IS AN ONGOING PROCESS
guarantee outcomes for women.125 Within a closed culture, difference is often regarded at best as ‘an irritation or discomfort to be disregarded’.126

It is no longer sufficient to point to the higher numbers of women leaving law school and entering private practice. It is their subsequent journey and career milestones (or ‘millstones’) that give rise to different outcomes for women and men.127 A closed masculinist culture generates numerous barriers to women’s progression, as the following Diagram 7.2 illustrates –

**Diagram 7.2: Cycle of cultural barriers acting against women solicitors**

- **Legal workplace culture based on male work patterns, ethos, style**
- **Senior solicitors/partners predominately male**
- **Women who seek advancement (esp. partnership) expected to conform to dominant culture. Those who do not, may be ‘excluded’ from private practice**
- **Senior positions in firms not attractive to women – reject male way of working**
- **Few senior women solicitors available (or willing) to act as role models or mentors**
- **Few women able to meet partnership ‘criteria’ based on male way of working (supported by home-based women)**
- **Women on the outer – may report low self-confidence**
- **Barriers to ‘breaking the cycle’ –**
  - *Reluctance to surrender dominant culture benefits*
  - *Too few senior women colleagues to open up dialogue for change within workplaces*
  - *Lack of management knowledge and skills*
  - *Low (or no) priority to acquire management skills*
  - *Inability to ‘unlearn’ old ways of being lawyers*
  - *Lack of top down impetus through peak body*

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128 Adapted from Newman, Janet, ‘Gender and cultural change’ in Itzin, Catherine and Newman, Janet (eds), Gender, Culture and Organizational Change – Putting theory into practice (1995) 11, 24.
Queensland legal firms operate in the shadow of a traditional club and old school culture. There is evidence that, as a corollary of that outdated culture, women are still assigned to outmoded stereotypes and roles that inhibit their advancement within the profession. Many firms adhere to an unquestioned client-service ethic that perpetuates a culture of long hours and workplace visibility, and where home life is only valued in its ability to support work life. When the managing partner of one national firm told an interviewer that his lawyers ‘don’t have a right to any free time’, it caused a furore. As one commentator observed, ‘he made the mistake of being honest’. Such ‘begrudging corporate cultures’ set career and family on a collision course that can only add to the stress solicitors feel as they try to manage their legal and personal lives. In this connection, David Gebler identified ‘at risk’ cultures that will be marked by attributes such as ‘blame, control, empire building, fear, long hours, power and risk-taking’ – all of which were described in varying degrees by research participants. These features of an inflexible workplace only serve to reinforce the cultural barriers that I outlined in Diagram 7.2 above.

129 See: Chapter 3, Section 3.6 A Question of culture, p 3-16ff. Also: Moore, Leah, ‘Smart women fight boys’ club culture’, The Courier-Mail (Brisbane), 3 November 2004, 2.
130 See: Chapter 4, Sections 4.4 Kanter’s Role Traps, p 4-15; and 4.5 A Kanterian Legacy, p 4-25.
131 For a distinction between ‘workaholic’ and ‘overworker’ relevant to future debate about the long hours culture of the law, see: Peiperl, Maury and Jones, Brittany, ‘Workaholics and Overworkers – productivity or pathology?’ (2001) 26 (3) Gender & Organization Management 369.
133 Pryor, Lisa, ‘The gilded cage’, The Age (Melbourne), Good Weekend 42. The report stated that Tom Poulton, managing partner of Allens Arthur Robinson, told Business Review Weekly on the receipt of an award for client service: ‘We don’t run this place as a holiday camp. We expect our people to treat the client as if they were God and to put themselves out for our clients. You don’t say, “Sorry I can’t do it, I’m playing cricket on the weekend” … You don’t have a right to any free time’.
Culture change needs to come from the top with the professional peak body promulgating and modelling change within the Society, promoting and fostering a profession wide dialogue, and supporting individual legal practices (especially smaller practices with limited resources) to work towards change. Solicitors involved in my research had definite views on their peak body’s role to date, and what they wanted from the Society in the future. I now consider some of those issues.

7.9 THE QUEENSLAND LAW SOCIETY – A MODEL OF EQUITY?
The Society ‘has objectives which mirror the traditional obligations of any professional association including the preservation and maintenance of the integrity of the profession’.136 ‘Integrity’ has a number of significant meanings, but maintaining a unified profession, upholding fairness and ethical principles, and having a sense of cohesion and solidarity are fine ideals for any professional body.137 A belief in the integrity of the profession must carry with it a belief in the equality of the practitioners who come within its ambit, and a determination to ensure they are treated with fairness, good faith and sincerity.138

In 2004, an independent consulting group surveyed members of 13 Australian professional associations, including the Queensland Law Society. Participants were asked to respond to a number of questions about the reasons for becoming a member of their particular association. Findings were benchmarked against the level of satisfaction other respondents reported with their respective professional bodies.139 Queensland Law Society members reported that they were members because it was ‘expected’ of them. Meeting ‘employer expectations’ was the only reason where the Society exceeded the benchmark. In terms of ‘development of skills’ and ‘keeping up to date’, the Society was shown to lag considerably behind other professional bodies.

139 Eight organisations were used in the benchmarking exercise, including the Queensland Society, and also: Law Society of South Australia, Law Institute of Victoria and Law Society of Western Australia. The reasons for becoming a Queensland Law Society member that were benchmarked against other organisations were: to keep up to date with developments; assess information to assist role; support development of skills; belonging to professional association; meet employer expectations; and networking.
The then Queensland Law Society President said there was ‘a duty to share the survey results – warts and all – with members’. The findings also showed the Society ‘scored 6 out of 10’ in terms of how respondents (81 percent of whom were ‘employed within a private law firm’) would rate the Society’s ‘overall performance over the past twelve months’. The Queensland Society recorded the lowest score for ‘overall performance’ among the 13 professional associations involved in the study. The Society acknowledged the need to ‘become more relevant to members’. The report went on to advise ‘there were no significant differences in the members’ assessment of the Society’s overall performance when considering factors such as the age of members’, or firm type, or income levels. The report did not disclose the break up of respondents as to female and male practitioners, nor did it include any difference or otherwise in members’ assessments of their Society based on female-male responses. In view of the large numbers of women entering (and also exiting) the profession, I made various attempts to obtain this information but without success.

Participants in my research were generally negative about the role of the Law Society in their professional lives, although many wanted to see the Society do more to support private practitioners. Some were scathing in their criticism: *as soon as you have an organisation that doesn’t generate any income, and exists solely because of the money paid by its members, it becomes a self-perpetuating entity that seeks to justify its existence.* They cited a lack of transparency, and high dissatisfaction levels.

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141 Ibid.
142 Ibid.
143 Ibid.
144 Ibid.
145 I made various written and telephone requests during 2005 and 2006. I eventually received a full copy of the Consultants’ 2005 report (i.e. based on similar research carried out in the following year), but it also contained insufficient information to analyse whether there were any statistically significant differences in the rating/assessment of their professional body by women and by men in Queensland. I do not suggest that any person at the QLS deliberately sought to conceal information, rather the Society itself apparently had not sought such information from the consultants and no one appeared to consider such data could be valuable in understanding whether women and men might feel differently about this aspect of their professional lives.
146 Only one research participant had unconditional praise for the Society. This solicitor was a sole practitioner in a rural situation and reported great support from Society staff in a range of areas.
throughout the profession. Others were dismissive, describing the Society as a 
toothless tiger or a paper tiger. But others saw the opportunity for the Society to 
seize the moment, reinvent themselves in the eyes of the profession, and adopt as a 
cause the working life of lawyers.

I have referred in Chapter 1 to the numerous influences that act on solicitors as they 
negotiate their lives within, and outside, their professional world. These influences are 
powerful, and often represent, or reinforce, long-standing and deeply entrenched 
societal and professional mores as to ‘the way things are done’. The profession is so 
constructed that female, younger, or less senior, practitioners have little input or 
influence. Women generally are not strongly represented in the governance and 
committee system of their peak body. Research participants expressed the belief that 
women’s views are rarely invited or welcomed, and their voices are not equally 
privileged with those of male colleagues. One solicitor regretted that there’s no way 
to hear those voices ... and he also pointed out these women don’t stick around 
long enough to be heard.

This sums up a growing dilemma within the profession. Many women, and I suggest a 
growing number of men, reject the very long hours, the client demands (now 
potentially around the clock due to the growth of sophisticated communication 
technologies), the perceived requirement to sacrifice family for career, the lack of 
time to connect with community and children, and the health costs of being ‘married’ 
to a legal career. They leave their chosen profession without ever reaching the levels 
of seniority at which their voices might be heard inside firms or the wider profession.

The broader professional avenue to flag issues of concern and work for change is 
traditionally the Queensland Law Society committee system, or a seat on the

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147 I(m)35: 23-29 [male – 30s – partner – metropolitan]. These remarks were typical.
149 I(f)53: 24 [woman – 40s – employed – regional].
150 I(m)36: 24 [man – 40s – partner – metropolitan].
151 I(f)40: 7 [woman – 30s – partner – regional].
152 I(m)36: 26 [man – 40s – partner – metropolitan].
153 I(m)36: 26.
governing Council.154 I have already mentioned the low representation of women as committee Chairs or as Council members.155 Women also reported feeling unwelcome as committee members. One spoke of her frustration after she had repeatedly offered to take on some specific task or activity for a committee: *I’m the only female on the committee. I’ve done everything to be involved. And they’ve not asked me to report on anything, review any of the material, nothing; I guess I’m just a number.*156 A senior woman spoke of the difficulty of getting women to nominate for committees.157 One metropolitan partner dismissed the usefulness of the committee system to advance issues for women, or for the profession generally –

> people have a pretty low opinion of the Society and those types of committees and really have no time for them. They see them as not providing a very useful tool to enhance the professional furtherance of [women or the] development of the profession.

[man – 40s – partner – metropolitan]158

Another solicitor described the disillusionment women had experienced after being elected to the governing Council. She reported it was men who made the decisions: *There’d be an issue and the men would have decided it before the meeting.* Male colleagues were seen as *clubbing together and marginalising the women.*159

I have expressed in diagrammatic form160 the complexity of influences operating on solicitors’ lives, as well as a number of theoretical lenses, or bodies of literature, that could potentially assist researchers in providing different angles of view into the world of the private practice solicitor in Queensland. Those theoretical lenses have been used to illuminate and explicate findings, and to provide links to the work of other researchers. Significantly, the leitmotiv of women as ‘other’ than the acceptable male norm161 is reflected in the too frequent trapping of women professionals within

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154 Although a number of solicitors felt the Society had ceased to have relevance for them and they did not believe it could assist them.

155 See: Chapter 3, Section 3.7 Sisters-in-Law, p 3-22ff, esp Table 3.7: Women in practice and professional governance, at p 3-23. Also see: Appendix 7.

156 I(f)80: 12 [woman – 30s – former associate – regional].

157 I(t)70: 14 [woman – 50s – senior positions private and corporate – metropolitan].

158 I(m)72: 2.


160 Chapter 1, Diagram 1.1: Queensland solicitors – influences on and angles of view, p 1-19.

161 See particularly: Chapter 4, Section 4.2 Woman as ‘Other’, p 4-3ff. Women as ‘other’ is a key concept in much feminist theorising.
While practitioners saw a lack of fundamental commitment to supporting and progressing women in private practice, some also acknowledged the complexities involved. This solicitor captured much of the concern that was expressed –

*I don’t think that there’s necessarily an attitudinal commitment to addressing the issue of women in the profession. There’s more an attitude of: “why should they need special help? Let them sink or swim”. And that might be because women themselves have never been able to identify what their special needs are or what special help they would like to have. And some women don’t want allowances to be made, some women object to that quite vehemently ... I think the profession needs women in it. It needs to reflect society .... I think the profession needs to turn its mind to the issues.*

[woman – 50s – senior positions private and corporate – metropolitan]

The lack of ‘strategic focus within Australia addressing the issue of advancing women’ has been identified as an underlying problem for women in organisations. In its annual report for 2002-03, the Queensland Law Society’s published strategic plan seemed predicated on the assumption that women and men in the profession operated on an equal footing. There was no mention of women in the strategic plan, or in the business plan for the forthcoming 12-month period. In light of then available national research, the achievement of workplace equity in the Queensland profession would have been a timely goal. This could have been supplemented by a range of strategies, including: actively seeking and encouraging women to stand for Council, and a mentoring scheme to foster women’s professional involvement and advancement.

In 2008, the Society sought comment on its new strategic plan. It published key points, including a four-year target for the Society itself to be ‘an employer of choice’. No detail was provided and initially the full strategic plan was not

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162 See: Chapter 4, Section 4.4 Kanter’s Role Traps, p 4-15ff; and Section 4.5 A Kanterian Legacy, p 4-25ff.
163 I(f)71: 12.
available. This was subsequently posted on the Society website,\textsuperscript{166} but there was no mention of what specific targets had been set or what strategies might be adopted to give effect to this goal. The Society did not use the terminology ‘equal opportunity employer’ as does the West Australian Practice Board.\textsuperscript{167} The West Australian Board’s public commitment to workplace strategies to ensure women are progressed and promoted through that organisation is a positive model for all levels of the legal profession in that State. It demonstrates a resolve to support women and their equal role as legal professionals in Western Australia; and, as I have set out earlier,\textsuperscript{168} Western Australia was the only State to record women comprising 50 percent of its governing board.

In terms of the significance of this research in Queensland, I have referred to an opportune moment\textsuperscript{169} for reflection and change. Leadership is critical in effecting change. The Queensland Law Society suggests ways its objectives can contribute to broader Queensland government priorities. In particular, the Society lists: the promotion of business efficiency within law practices, the preservation and maintenance of the integrity of the solicitors’ branch of the legal profession, and the management of solicitors’ continuing professional development, as among the ‘outputs [that] relate most directly to the government’s priorities of building on economic success, strengthening educational outcomes, fostering healthy individuals and communities and modernising the Federation and delivering accountable government’.\textsuperscript{170}

But, the Queensland government has also detailed its commitment to achieving ‘pay equity’ for women as well as ‘a fair deal for women in the workplace’.\textsuperscript{171} It has instituted a \textit{Statistical Snapshot} ‘designed to provide an overview’ of the progress of

\textsuperscript{166} Available \texttt{<http://www.QLS.com.au/content/lwp/wcm/connect/QLS/About+QLS/Corporate+Documents/Strategic+Plan>} at October 2008.

\textsuperscript{167} See, for example: Legal Practice Board of Western Australia, \textit{Annual Report 1 July 2006 – 30 June 2007} (2007). The report sets out the staffing targets and achievements in the relevant 12 month period.

\textsuperscript{168} See: Chapter 3, \textit{Table 3.7}, above n 155.

\textsuperscript{169} See: Chapter 1, Section 1.4 Significance with a Queensland Focus, p 1-8, at p 1-11.

\textsuperscript{170} Above n 165, 9.

Queensland women ‘in a number of key areas’.172 While an ‘improvement’ was noted in the representation of women within the Queensland legal fraternity,173 that improved numerical representation does not address the more complex problem of the representation of women at various levels of the profession. In the Snapshot, the government specifically identified that the ‘core’ of its work was to ‘challenge barriers’ that prevent women’s full participation, with a focus on women sharing in ‘leadership, decision making and community building; achieving economic security; balancing their work, family and lifestyle; being safe; [and] having improved health and well-being’.174 The Queensland peak legal professional body needs to engage more directly with these issues.

Despite gains by women within the profession, there remain real concerns about the future. Some young women lawyers see the future of Queensland women in the law by 2025 as ‘not promising’. One considered the recent history of women, projected trends, and described a future ‘of continued gender inequality and a lack of women in leadership … roles … despite the availability and eminent suitability of women to fill these roles’.175 She urged work practices that would allow women and men to share family and carer responsibilities and roles, with workplace flexibility to encompass both timing and location.176 As she pointed out we need not only a clear destination for the future, but also a road ‘map to get us there’.177 I now look to a range of ideas that may assist in moving the profession along the way.

7.10 WAYS FORWARD

Initially, and perhaps most significantly, I argue that the Queensland Law Society needs to follow the examples of other jurisdictions by openly acknowledging

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173 Above n 171.
175 Stockwell, Amy, ‘Are We There Yet? Plotting a Course to a Visionary 2025’ in Purdon, Susan and Rahemtula, Aladin (eds), A Woman’s Place – 100 Years of Queensland Women Lawyers (2005) 667.
176 Ibid, 669.
177 Ibid, 668.
problems of discrimination, lack of legal workplace flexibility, and systemic and structural difficulties that militate against success for some Queensland solicitors. Naming the problem is a very powerful way to open up dialogue within and across the profession. Indeed, the profession has started on this road with its involvement in the working group on depression and its collaborative research interest in work life balance.178

As part of fostering open communication and new ideas, open debate and careful use of language is essential. One solicitor suggested the Society needed to make the language of their own communication a little less gender biased.179 There are simple, yet powerful, ways the Society can show inclusiveness by ensuring it publishes regular information about numbers of women and men and the roles they play in the profession e.g. Society members, practising solicitors, equity partners, salaried partners, committee and Council members. The West Australian Practice Board provides an ideal example of this. The Society can use its voice nationally to encourage other professional bodies to adopt uniform ways of reporting this information so Australia-wide comparisons can readily be made.180 A former President of Australian Women Lawyers has suggested a ‘central coordinating body to oversee collection of these data’ as ‘there are currently insufficient statistics to to properly monitor the progress of women in the legal profession’.181

Contrary to current discursive practices, a regular listing of Society Committee members by their full names will permit a ready assessment of the numbers of women engaged in this aspect of professional life.182 Similarly, full names of nominated

178 Above n 27.
179 l(f)51: 28 [woman – 50s – partner – regional].
180 In the course on my enquiries to obtain details of women’s involvement in professional governance, a member of one Women Lawyers group said they would be taking up the detailed reporting used in Western Australia and urging that as a model for reporting in their own jurisdiction. Refer: Chapter 3, Section 3.7 Sisters-in-Law, p 3.22, esp Table 3.7: Women in practice and professional governance, at p 3-23.
182 Until recently, the publication of Committee members in the Annual report showed first initials and last name only – for example, see: Queensland Law Society, 75th Annual Report 2002-2003 (2003) 31. This was perhaps non-problematic when all members were male. However, it signals a closed off communication style and renders women’s contributions invisible. More recent Annual Reports do not include a full list of Committee members, nor are they listed on the website under Sections/Committees (names of Chairs only are shown) (April 2009).
senior counsellors and advisers around the State should always be shown when 
promulgating this information to the profession. The Society’s confidential 
counselling service for solicitors, Law Care, could be encouraged to publish regular 
(de-identified) statistics and case studies to members to inform practitioners suffering 
stress and depression that they are not isolated and alone in their experiences.

Another pivotal role for the Society is encouraging new ideas and ongoing debate and 
discussion in the areas of workplace discrimination, and workplace flexibility, as well 
as around notions of success and innovation in alternative career options and 
pathways. The Society ably demonstrated its ability to commit to such a role when it 
took a community lead on issues of elder law reform and support for and protection of 
senior citizens.183 This experience well equips it to lead both the profession and the 
community in a debate that encompasses whether we need to privilege the having of 
children to protect and provide for the future of society, and how those beliefs and 
aspirations might feed into the need for flexible workplace policies and practices. This 
is timely in view of the current broader public debate about paid maternity leave.184

The Society needs to be positioned as an honest broker to facilitate a range of 
discussion and feedback fora where practitioners can openly share ideas within and 
across demographic groups, and be open to ideas from other, legal and non-legal, 
professions.

The Society also has a key role to play in modelling behaviours that are appropriate to 
an inclusive and equitable workplace culture. This can be achieved in part by ongoing 
and positive promotion of the Equal Opportunity Employer Awards, but more 
significantly by modelling strongly inclusive equal opportunity workplace practices 
within the Society itself. The Queensland Society could adopt the Western Australian 
model where the Western Australian Practice Board publicly reports on its targets and 
achievements as an equal opportunity employer.

The Society can initiate changes in its own governance. Giving fully resourced

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183 Elder Law has full section status (as does Children’s Law) in the Law Society section/committee 
system. The section holds an ‘annual’ Elder Law Conference (e.g. ‘Conference Spotlight: Elder Law 
Conference’ (2007) 27 (5) Queensland Law Society Proctor 36), and sponsored an information 
brochure (February 2003) on elder abuse with the Queensland Department of Families.

184 Schwab, Peter (ed), ‘Macklin pumped over PML inquiry’; ‘PML gets women back to work faster’ 
Section status to an equity group within the current committee structure at the least, or the institution of a New Zealand style Women’s Consultative Group at best, has the potential to provide quality feedback to the Society on the full range of professional issues that directly affect women in private practice. A significant initiative of the New Zealand profession was the 1994 establishment of the Women’s Consultative Group (WCG), which acts as an advisory body to the New Zealand Law Society’s governing Board. While Group members are appointed annually by the Board, the Group is independent of the Society’s committee structure and acts as a discussion forum for a wide range of issues that can affect women within the legal profession.¹⁸⁵ I suggest that this is a model that could have considerable benefits for the Queensland profession. Such an initiative could also deliver a mechanism to suggest, implement, and oversee research on some of the issues that I outline more fully in Section 7.11 below. The Society could also develop mentoring strategies designed to attract and encourage women to run for positions on Council and to serve on the full range of Society Committees. The Committee Charter could be drawn to reflect the importance the Society attaches to gaining better representation across the membership’s demographic groups.

Many practitioners in my research admitted to a lack of management expertise, and particularly a lack of knowledge and skill in the preparation and promulgation of workplace policies. Especially those in smaller offices expressed despair at their time- and resource-stretched inability to implement a range of basic staff requirements. They urged some form of human resources consultancy and service role as appropriate for the Society. This could encompass an advice role (e.g. on recruitment and selection processes and performance appraisals), a resourcing role (e.g. provision of model workplace policies), an audit role (with the conduct of human resource audits in respect of policies, workplace training, promulgation of information), and an educative role (provision of training). Where the Society has its own legally compliant and up-to-date policies, these can be readily made available directly, or after appropriate adaptations, to individual firms on request.¹⁸⁶ I suggest as a starting

¹⁸⁵ See: website <www.lawyers.org.nz/wcg> Also: Gatfield, Gill, Without Prejudice: Women in the Law (1996) esp 293ff. Another option is provided in the Australian Capital Territory model where a special observer position has been created with appropriate feedback avenues in respect to women’s issues.
¹⁸⁶ The New South Wales Society has supplied its members with free copies of workplace policies.
point these policies should include: recruitment guidelines; anti-discrimination, sexual harassment and bullying policies; information about workplace mobbing behaviours; and a comprehensive grievance policy; together with advice for associated implementation and staff training. In line with New South Wales practice, these should be made available to legal firms without cost.

I argue that the issue of human resource management in legal firms could provide the central focus for the Queensland Law Society in the 21st century. The advice and resources practitioners need, especially in small and medium size firms, is fundamental to both financially successful businesses and to healthy and happy practitioners. A Victorian Law Foundation study in 1996 identified key ‘needs’ for effective practice as: sound values in the firm; intellectual challenge and the ‘right’ work type; personal recognition and support; communication; career advancement; balance between professional and private lives; and fairness.187 These remain excellent starting points for developing appropriate policies, resources and information to assist and advise solicitors in private practice, and to incorporate in future Practice Management materials and coursework.

Where the Society is unable to provide its own policies or resources, consideration should be given to developing these in partnership with other key bodies such as the Legal Services Commission, Law Care, Beyond Blue, the Queensland Anti-Discrimination Commission, Women Lawyers Association Queensland, other legal professional associations, consultancy groups, and recognised research bodies such as universities. The Queensland Society displayed a New South Wales Law Society workplace bullying policy on its website in circumstances where Queensland had no policy of its own.188 Policy sharing could be one outcome of ‘partnership’ arrangements, but there are also possibilities for broader information sharing about

188 As at April 2009, that policy was no longer displayed or accessible through the Management and HR tab on the QLS website. Consideration could be given to obtaining other policies from outside organisations. While both New South Wales and Victoria have developed suites of policies, so have professional bodies elsewhere e.g. American Bar Association Commission on Women in the Profession, Empowerment and Leadership – Tried and True Methods for Women Lawyers (2007?); American Bar Association Commission on Women in the Profession, Sex-Based Harassment – Workplace Policies for the Legal Profession (2nd ed 2007).
the role and status of women in the profession, original research, policy development, conferences and seminars on workplace topics, and staff exchanges to ensure the Society remains fully up-to-date with new ideas and initiatives in these areas. Information sharing partnerships and discussion fora could also be explored with large Queensland law firms that enjoy considerable in-house expertise in human resources management, and in some cases have particular specialised legal expertise in workplace equity issues.\textsuperscript{189}

The Society could alone, or in partnership with other firms or organisations, look to instituting a mentoring scheme for women in particular, and junior practitioners in general. Ideally the details of such a scheme could develop out of wide-ranging professional dialogue. At the very least, women could self-refer to a Society sponsored mentoring program where they were unable to access direct and effective workplace mentoring. This would provide valuable assistance particularly to women in regional areas or small firms where there is a lack of available senior practitioners and resources within an individual firm or particular geographic area. Mentoring should not be restricted to areas of legal practice, but extend to formal and informal networks, sporting activities, and social events connected to professional life. The Society and senior lawyers should demonstrate commitment, not only to mentoring and supporting women, but also to ensuring professional activities are not arranged in venues and situations where women are not welcome.

The lack of confidential and trusted complaint mechanisms within many legal workplaces is a serious concern. Complaint mechanisms could be designed and implemented by the Society to guarantee a safe avenue for aggrieved practitioners who are unable to lodge complaints within their own firms, particularly where the complaint lies against a senior practitioner or partner. I suggest that complaint processes might be best established in partnership with another outside and independent body to ensure trust in the integrity of the process. Ideally, the Society would look to establishing and resourcing an independent position of a grievance

\textsuperscript{189} While I have discussed elsewhere the fact in-house human resource managers may not have decision-making and policy powers, they nevertheless have a broad range of professional skills and knowledge.
ombud, sufficiently resourced so as to provide both complaint handling and educative roles to the profession.

The Society should undertake a review of senior counsellors as to their role, the currency of their expertise, and their specific communication skills and experience to handle sensitive and stressful issues. Their role could be effectively expanded to include practitioners with the up to date and necessary skills to act as first line inquiry-cum-grievance officers where individual solicitors experience workplace discrimination, harassment, and/or other inequitable workplace treatment. Where a formal complaint is subsequently lodged, senior counsellors could play valuable confidential support roles for both the aggrieved practitioner and the alleged perpetrator. Senior counsellors are currently listed by location with no information as to the sex of the person, details of their particular expertise, or whether their nominated contact details are business hours only. A number have been on the list for many years and there appears to be no evaluation process to assess their effectiveness. Expressions of interest, with details of expertise and fitness for the role, could be called by the Society to give these positions appropriate transparency and credibility to practising solicitors.

Not only does the Society have a key role to play in educating practitioners, it also could develop an effective educative role for both the profession and the public about the risks of stress and depression where practitioners work long open-ended hours, take few holidays and advertise a 24-hour availability. While this mode of working is a key area for dialogue within the profession, many practitioners saw the Society as having a shared role in training clients to accept (as has occurred between patients and the medical profession) that a particular solicitor may not always be personally available. The profession needs to promote the role of other professionals, paralegals and support staff within a firm and their ability to manage a range of routine client enquiries.

I have outlined a range of initiatives that could be taken up by the Queensland Law Society. In other jurisdictions, action for change has also come from individual

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190 For example, see: Senior Counsellors listing in (2008) 28 (9) Queensland Law Society Proctor 58. Although full names do appear on the QLS website.
practitioners or groups. In limited circumstances this has taken the form of lodging formal complaints of discrimination,\(^{191}\) and even test cases,\(^{192}\) or through political lobbying and submissions on issues such as maternity leave and the tax deductibility of childcare.\(^{193}\) There was a broad acceptance among my research participants that formal complaints or actions by individuals were rare for fear of future adverse repercussions in terms of employment.\(^{194}\) However, one practitioner suggested that where there were reports of specific practitioners or firms who breached anti-discrimination legislation in recruitment or management practices, that there may be some scope for the lawyers to draw a list of those practitioners where there are reports [of misbehaviour] and suggest that people not apply to those firms. This notion of ‘name and shame’ has been used elsewhere. Although as one solicitor commented concerning those practitioners who currently failed to implement equitable and inclusive work practices: I don’t think [those] practitioners will change. If you’re a dyed-in-the-wool chauvinist and you’re 55 plus I don’t think there’s much we can do to save you at that point.\(^{195}\)

The Queensland Law Society already provides some limited sponsorship and support to groups such as Women Lawyers Association Queensland.\(^{196}\) The Society could examine ways in which support can be extended through direct funding, or additional administrative and research assistance, in connection with specific projects aimed at advancing women within the solicitors’ branch of the profession. The role of the peak body is crucial in giving a lead, but it is ultimately within individual legal businesses

\(^{191}\) Re formal complaint of discrimination brought by Queensland solicitor, Marea Hickie, see: Chapter 4, Section 4.3 Keeping Their Heads Down, p 4-8ff.

\(^{192}\) One such test case was brought in England by two women against the Lord Chancellor for the latter’s selection of a male lawyer as a special adviser. At first instance, the women succeeded, with the Tribunal finding the ‘Lord Chancellor accepts that his area of association is such that … he would have considered more white men than women, and that those of African, Caribbean or Afro-Caribbean ethnic origin would have been in a very small minority’. The decision was overturned on appeal – The Lord Chancellor and The Lord Chancellor’s Department v J Coker and M Osamor [2001] EAT.

\(^{193}\) I have referred, for example, to the South Australian profession’s actions re childcare tax deductibility – see: Chapter 3, Sub-Section 3.7.4 South Australia and Tasmania, at p 3-32 n 128.

\(^{194}\) See, for example, Chapter 4, Section 4.3 Keeping Their Heads Down, p 4-8.


\(^{196}\) See: Australian Women Lawyers, ‘Queensland Report’ (2008) 10 Themis 7 (where WLAQ acknowledges provision by QLS of meeting room and refreshments for monthly meetings).
that change must take place. The Queensland Law Society, like other associations around the world, ‘faces fundamental difficulties in adjusting to contemporary conditions’. This is especially so since the Society lost its traditional regulatory responsibilities. Targeted research on its own role as seen by individual members and legal firms, partnerships with other bodies, as well as responses to broader issues raised in my research, are all part of the mix a modern peak body needs in order to meet and manage the professional future.197

I now turn to some suggestions for future research directions in connection with Queensland solicitors.

7.11 FUTURE RESEARCH DIRECTIONS

My research was exploratory in nature and was grounded in avowedly feminist research traditions,198 and defined practical purposes.199 This emphasis on the practical is well supported by an extensive architecture of feminist theory.200 It both allows and encourages the collection of data as the starting point. My research set out to build up multiple layers of rich data from various sources and using a range of qualitative and quantitative methods. From this I was able to work towards an elaboration of the key research issues201 by the use of a range of models and frameworks – some building on the theoretical work of others, some striking off in new directions from existing theories and understandings, some creating fresh insights into the daily dilemma of legal lives, but all designed to enhance our understanding of the dynamics of the profession and the ways in which individual practitioners articulate their daily lives within it.

The frameworks and explorations found within human resource management

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198 With making a practical difference the key – see: Chapter 2, Methodology and Methods, esp Section 2.2 Methodological Framework, p 2-2 ff.
199 See: Chapter 1, Section 1.5 Aims and Purposes, p 1-15ff.
200 See: above n 196.
201 See, for example: Neuman, W Lawrence, Social Research Methods – Qualitative and Quantitative Approaches (3rd ed, 1997) esp Chapter 3 Theory and Research, pp 36-59.
discourses, especially those with a gender focus, have been perhaps the most valuable theoretical tools in this research. In this regard, I argue that an analysis of the client service discourse (particularly the ways in which it can mute concerns about both gender discrimination and ineffective management practices) holds the key to whether there can be different ways of doing law and being lawyers in the future. The current adherence to age-old client-service requirements effectively socialises solicitors so that they develop, however subconsciously, theories of work and home that support the extant organisational culture. This was evidenced in the narratives of research participants, as well as in the discursive practices and popular culture influences that both permeate and comment upon the profession.

Future research generated by and about the profession needs to be open to a range of approaches and aspects that will allow practitioners to safely reveal vital information and details and will allow the researcher/s to be flexible in their collection and interpretation of data.

In line with a role adopted by governing bodies in other Australian jurisdictions and overseas, research activities undertaken directly, partnered, sponsored, fostered or supported, by the Queensland Law Society can generate some key benefits for the profession –

1. It brings the profession into line with other common law jurisdictions both within Australia and overseas, and this is significant as Australia moves closer to a national profession and in light of the increasing globalisation of the legal services market.
2. It provides an important lead in highlighting areas of concern where practitioners consistently suggest that it is not safe to speak out because the profession generally will be hostile to such views.
3. It demonstrates the profession’s commitment to the wellbeing of all its practitioners.

202 Discussed primarily at Chapter 5, Section 5.7 ‘If We Don’t, We Lose the Client’, p 5-25 ff.
203 For commitment to the voices of the research participants – see: The Catalyst (prior to start of thesis); and Chapter 2, Methodology and Methods, esp Section 2.2 Methodological Framework, p 2-2 ff.
204 Refer: Chapter 2, Sub-Section 2.4.6 Examination of Discursive Practices, p 2-24.
205 Refer: Chapter 2, Sub-Section 2.4.5 Literature Review, p 2-22.
206 See: Chapter 3, Section 3.7 Sisters-in-Law, p 3-22ff; Section 3.8 Lessons from Abroad, p 3-37ff.
4. It fosters a climate and culture where questioning past ways of being lawyers and doing law is encouraged and supported as an integral phase of an ongoing professional dialogue.

5. It enables monitoring of issues of concern and an ability to respond proactively to these, as well as to new issues that may be disclosed.

6. It ensures the Queensland Law Society receives meaningful input from all firm types, sizes and locations, and from the perspective of a range of practitioners.

Victorian research demonstrated the need to promote women in the private profession; urged a re-examination of access to training and development, networking and mentoring activities, and quality work allocation; and highlighted the introduction of new and creative benefits around flexibility to assist all practitioners achieve their full potential in the context of a healthier work life balance. Survey findings in 2000 showed slightly more than half (54 percent) of respondents saw themselves as having a long term future in the legal profession, with only 21 percent willing to remain in their present workplace for up to 12 months.\(^\text{207}\) It is a concern for the long-term viability and success of private legal firms that only 23 percent of young private practice lawyers were willing to commit for two to four years, compared to 31 percent of corporate and 42 percent of government lawyers willing to commit to their workplaces for that same period.\(^\text{208}\)

The Law Institute of Victoria Young Lawyers’ Section issued guidelines for legal workplaces, with an emphasis on sound human resource management practices.\(^\text{209}\) These call for workplaces free of discrimination; and obligations on employer and employee to foster a ‘quality of life’ with emphasis on balanced and healthy lifestyles and promotion of ‘flexible and sensible working hours’.\(^\text{210}\) The guidelines suggest ‘consideration should be given’ to employment contracts including provision for


\(^{208}\) Ibid, 13.


\(^{210}\) Ibid, 3.
flexible working arrangements.211

The value of the New South Wales work lies in the identification of key issues that affect women’s legal practice progress, viz. a culture of traditional and outdated attitudes, ongoing discriminatory practices, lack of meaningful flexibility, and an absence of genuine alternative routes to professional success. As I have outlined,212 the New South Wales Law Society has acknowledged that lawyers generally seek a different kind of profession, and importantly has demonstrated a clear commitment to change, and support for change, as the governing body.

There may be no fixed answers, but at least profession-led research can develop a view of organisational and professional reality ‘that allows analysis of both what is known and obscure, “seen but unnoticed”, and what is only revealed by successive peeling back of layers of structure and meaning’.213 It is imperative the profession begins to investigate and debate a wide range of issues openly and transparently.

My research discloses that areas where further research214 is urgently needed include: reasons practitioners are leaving the profession; the increase in salaried partnerships compared to equity partnerships; the criteria used for (equity) partnership selection;215 managing career breaks (for a range of purposes including maternity leave); the reasons practitioners have for seeking workplace flexibility, and the types of flexibility (including part-time equity partnerships and job sharing for professionals); alternative career paths (how they are recognised and remunerated); the increasing role of technology in legal workplaces and the impact of technology on women and

211 Ibid, 7.
212 See: Chapter 3, Sub-Section 3.7.1 New South Wales, p 3-24.
213 Hearn and Parkin, above n 1, 45.
215 See: Richards, Alexandra, ‘Women in the legal profession: An overview’ in Australian Law Reform Commission (2003) issue 83 Spring Reform <http://www.austlit.edu.au/cgi-bin/disp.pl/aua/other/alrc/publications ...> at 31 May 2006, citing Margaret Thornton: ‘the higher one goes in the hierarchy of jobs, the more significant is the notion of merit. Paradoxically, merit criteria become correspondingly more elusive so that the evaluative process becomes less visible’.
men within private practice, how the Practice Management Course or other legal education avenues can deliver more focused human resource management skills to practitioners; whether men have more difficulties in reporting and/or dealing with workplace stress; how the utilisation of parental leave affects men’s career trajectories; and how widespread is the lack of confidence among women practitioners and what interventions or supports are needed to address this issue.

It is important to clarify that the issue of women and confidence should not be interpreted as another ‘women’s problem’, but must, as we have seen, be contextualised in the shortcomings of the wider professional culture. One commentator pointed out, ‘This does not for one moment suggest that no work needs to be done on encouraging individuals … to review their own self-imposed inhibitions. But the encouragement and counselling of individuals to stretch their expectations is far more likely to produce the desired confidence if there is some hope on their part that the expectations have a reasonable chance of fulfilment’. I also suggest that women would have more confidence in their careers if partnership selection criteria were transparent and flexible, and if, as one interview participant crucially remarked, those criteria recognised the prevailing reality that the client is served and profits are generated not simply because one or some individuals bring the work into the firm, but because other individuals (many of them women) perform consistently professional quality work to ensure that business is retained.

Ongoing research is also needed to investigate current workplace equity policy availability and accessibility within legal practices, the nature of workplace culture,  

\[\text{216 One Canadian commentator has asked whether legal workplace technology has had the promised ‘transformative effects’ or whether it simply fortifies ‘pre-existing discriminatory patterns’. Jane Bailey points out that (61-62) ‘workplace technologies have been used to enable flexible arrangements, but can also be associated with increased levels of stress and the blurring of work and home life’. She argues (70-71) ‘any future analysis of the struggle for diversity and equality in the legal profession that fails to take account of the impact of workplace technology would ignore an issue flagged as gendered in 1993, and one that can be expected to continue to profoundly affect workplaces across Canada and in many other parts of the world’. See: Bailey, Jane, ‘Legal Workplace Technology and Equality for Women Lawyers: Fortifying or Transforming the “Master’s House”? in Sheehy, Elizabeth and McIntyre, Sheila (eds), \textit{Calling for Change – Women, Law and the Legal Profession (2006) 53}, 70-71.} \]


\[\text{218 See: Chapter 6, Section 6.7 The Holy Grail, p 6-23, at p 6-26.} \]

\[\text{219 This is a significant area for future research, particularly in terms of maintaining a gender narrative (refer: thesis Chapter 1, Section 1.3 Maintaining a Gender Narrative, p 1-6ff). Mary Jane Mossman has}\]
and reported levels of ongoing discrimination and sexual harassment.\(^{220}\) I argue it is of particular urgency for the Queensland Society to be proactive in these areas in the light of a report currently before the Federal Government. This report urges the creation of a broad positive duty to promote equality and remove discrimination and to take reasonable steps to avoid sexual harassment.\(^{221}\) It is timely, and particularly appropriate for a legal profession, to act as a community leader in addressing discrimination, harassment and bullying within its own ranks.

I suggest Queensland research should specifically focus on the exclusionary indicators I have identified in this thesis.\(^{222}\) This would be with a view to ascertaining the ongoing prevalence of these factors in private practice, and the point at which women in particular feel subjected to ‘exclusionary overload’ such that they see no option but to leave their chosen profession. However, in the light of the research that does now exist in Queensland and elsewhere, I suggest there is no value to solicitors if the professional body opts to examine afresh whether or not inequalities and inequities exist at all within the profession. Reflecting on inequality is needed, but it is also time for ‘privileging various forms of practical action’\(^{223}\) so that the Queensland profession can move into line with initiatives elsewhere.

The Law Society should investigate what members need, and what the Society can offer (especially to small and medium size firms) in terms of human resources management, specifically: resources (such as model policies), training, advice, audits, urged that strategies for change ‘must take account of the fundamental imperatives of work itself, and especially the culture within which legal work is done’ – Mossman, Mary Jane, ‘Legal Education as a Strategy for Change in the Legal Profession’ in Sheehy, Elizabeth and McIntyre, Sheila (eds), Calling for Change – Women, Law and the Legal Profession (2006) 179, 193.

\(^{220}\) The fact that discriminatory practices may have become less overt does not lessen the importance of identifying and challenging those practices which can directly affect the ability of some solicitors to operate within legal private practice – see: Mossman, above n 219, 193.


\(^{222}\) See: Chapter 4, Section 4.9 Black Sheep and Millstones, p 4-56ff, esp Diagram 4.1: Exclusionary indicators in legal workplaces, at p 4-62.

complaint handling, or other roles.\textsuperscript{224} Research and investigation into possible Law Society governance models will allow the development of the future structure of a professional body best suited to meet practitioners’ needs. Similarly, ongoing research and debate into the future possibilities of multi-disciplinary legal practices and incorporated legal practices needs to consider what benefits, if any, these new forms of legal businesses may have for flexibility and for work life balance. One interview participant was confident that incorporation could better cater to different levels of commitment, and offer women a much better chance of living a balanced working life, than our partnership system does.\textsuperscript{225}

Some research directions suggest a ‘fit’ with work done by other bodies or groups. This means that partnerships could be fostered not only in terms of the conduct of research, but also in the provision of services and solutions to address issues identified by research. One example of possible future synergy lies in the recent launch of a mentoring program for women by the Women Lawyers Association of Queensland.\textsuperscript{226} Similarly, the Society could work with the tertiary education sector to investigate what roles the universities and providers of legal education can play in addressing issues of concerns to solicitors, from providing a realistic view of private legal practice to training in appropriate communication and management skills. The Society also needs to specifically tap the reformist energy of legal workplaces where different and more equitable ways of working have been implemented, both within Queensland and also further afield.\textsuperscript{227}

Research collaboration with law firms offering flexible work practices would provide an evaluation and monitoring avenue for the legal practices involved, but also provide valuable information for a wider professional debate as to what is possible, what problems arise, levels of uptake, why flexible practices are discontinued, and what

\textsuperscript{224} The Society has instituted training programs specifically within the human resources management field. The uptake of these suffers from practitioners’ own lack of appreciation of what they don’t know. \textsuperscript{225} \textit{I(m)78}: 20-21 [man – 50s – senior partner – metropolitan]. Also: Mahon, Megan, ‘Structuring your legal practice – The role of ILPs, service trusts and other entities’ (2005) December \textit{Queensland Law Society Proctor} 19. \textsuperscript{226} Known as the Ladder Program – see: Australian Women Lawyers, ‘WLAQ has also launched their mentoring program’ (2008) (10) \textit{Themis} 7. \textsuperscript{227} For example, see: Merritt, Chris, ‘A firm that drops flash for dash’, \textit{The Australian} (Sydney) 3 April 2009, 25; Merritt, Chris, ‘Revolt against billable hours heralds a new era’, \textit{The Australian} (Sydney) 3 April 2009, 25.
supports firms need before they institute flexible work practices. Where flexible policies have already been instituted, and where firms identify problems, the consequential and unintended consequences of flexible practices could be tested against the implementation model I have developed in this thesis.  

I argue it is imperative that any exploration of individual solicitors’ perceptions and experiences of workplace flexibility be coupled with investigations of particular organisational contexts as well as wider professional support for, and promotion of, work life policies. Useful and usable future research will explore not only individual experiences and understandings, but will also examine the extent of management support and organisation support, career implications of flexible working, organisational time expectations, gendered perceptions around policy usage, and the extent of co-worker support. Again, such profession-initiated research would be timely in view of a recent majority report from the Senate Standing Committee on Legal and Constitutional Affairs. This report urges the introduction of a positive legislative duty on employers to accommodate reasonable employee requests for flexible working arrangements. 

I re-emphasise the importance of maintaining a gender narrative in future research. Research in other jurisdictions shows that it is often ‘women with substantial family commitments [who] drop off the promotion track, leaving behind a decision-making structure insulated from their concerns’. Although these, and other, women have left the profession, they remain an untapped source of valuable information, views and ideas. As I have suggested, exit research with all practitioners leaving practice as

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228 See: this Chapter Table 7.1: Responses to unintended consequences of policy initiatives, at p 7-28; and Diagram 7.1: Model for introducing new workplace practices, at p 7-31.

229 Five dimensions of policy utilisation were identified in 2005 research – see: McDonald, Paula, Brown, Kerry and Bradley, Lisa, ‘Explanation for the provision-utilisation gap in work-life policy’ (2005) 20 (1) Women in Management Review 35. Also see: Chapter 5, Section 5.8 What’s In a Name?, p 5-29, at p 5-32 n 128.


231 See: Chapter 1, Section 1.3 Maintaining a Gender Narrative, p 1-6ff.

solicitors (both current and, if records permit, historical) needs to be undertaken as a matter of some urgency. 233

These suggestions for future research also dovetail with lawyers’ needs to manage risk within their legal practices. A representative of the profession’s insurer warns of the dangers when solicitors feel ‘depressed, overworked, taken-for-granted or dissatisfied generally’. 234 Research participants stressed their collective dislike of regulation, but they also recognised their lack of management skills and their need for support and input in this vital area. To a large degree, workplace equity, workplace flexibility, and a range of career paths and options will be dependent upon the management expertise of solicitors charged with managing other professionals inside legal firms. Up to date and on-going research will be central to both individual legal practices and to peak body decisions about appropriate and timely assistance to members.

Mere statements of aspirations will not ground true standards and values. Standards and values are built on what a profession is prepared to enforce. ‘Something cannot be called a value or a principle if you are allowed to transgress it’. 235 It is indeed an opportune time for reflection within the Queensland profession, but it is also an essential time for action. It is no longer enough for firms to demand that their solicitors succeed, but the profession needs to take a responsible and balanced approach to helping solicitors to succeed in ways that benefit the individual practitioner, the client, and the firm. 236

7.12 CONCLUSION
As we move towards the end of the first decade of the 21st century, the world is embroiled in a global financial crisis. All businesses are facing serious challenges.

235 Maister, above n 119, 75.
236 Ibid, 93. Also see: Appendix 13 for one Queensland partner’s clear statement of ways to promote work life balance and achieve profitability.
Many, including legal practices world-wide, are cutting staff and disinclined to embark on new employee benefits or programs. ‘Work-life balance has dropped down [the] list of demands’ from candidates for, and incumbents in, legal positions. The imperative for job security is now at the top of wish lists in many sectors of the profession. It would be extremely short-sighted for the Queensland profession to step back from the issues raised in this research due to the economic downturn. The financial cycle will turn and the problems of workplace equity, flexibility and success will remain. This is the time for the profession to position itself competitively in terms of modern workplace policies and practices.

More evidence is emerging of the need to create a better work environment and a better balanced and less stressful lifestyle for all practitioners. Almost one-third of male lawyers surveyed in the United Kingdom said they would not want their children to become lawyers. But the Chief Executive of recruitment firm Hudson, who conducted the survey, said:

> With dark clouds on the economic horizon, employers may revert to short term retention tactics, focusing too heavily on salaries, for example. By contrast, in many cases, improved communication and a more flexible approach can empower and liberate employees. Trying to keep frustrated employees motivated and upbeat will be one of the key challenges for businesses in these tougher economic conditions. Ignoring employees' concerns will not be an option.

More than 20 years ago, the then-President of Women Lawyers Association Queensland spoke of her concerns that the proportion of women admitted as Queensland solicitors continued to climb, but that the proportion represented in

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239 Reported in: Chivers, Tom, ‘One in three lawyers would dissuade their children from following in their footsteps’ *Telegraph* (London) 7 July 2008 (available on line at ABA Journal – Law News Now <aba.net.org> at 16 July 2008).
partnership numbers did not. She said there was an ‘observable tendency to “encourage” women to practice in the fields of family law, succession and probate, and conveyancing … “clean” areas [that are] also those of lesser earning capacity’. She spoke of women who wish to have children and pursue their careers inside a profession ‘which holds specific social values based on a biased presumption’. She described the structure of law firms as designed ‘to cater to male needs and privilege’. She expressed concern that women’s more limited ability to devote time to ‘after-work pursuits of entertaining clients, and partaking in extra-curricular committees’ had been equated to women’s ‘lack of interest, ability or ambition which may not be borne out on actual investigation’.

The speaker went on to suggest there ‘may be more to life than being a partner’, and that ‘increased flexibility in conducting practices’ and possible profession-sponsored childcare arrangements should be examined. She also expressed concern about emerging evidence ‘that quality of life is being ignored to the detriment of practitioners’, specifically in terms of wastage of qualified professionals, stress-related financial problems, and work-related drinking problems. In so clearly identifying these professional issues, she remarked ‘[o]n purely pragmatic and sound economic grounds, it makes little sense to make the investment in educating and training women … and not to realise the full potential of that investment’.

At the time of writing (April 2009), that 1988 speaker is preparing to return to Queensland, this time in the capacity of newly-appointed Chief Executive Officer of the Queensland Law Society. The challenges have not shifted since Noela L’Estrange explicated them so clearly 21 years ago. However, I suggest the recognition of the issues is much wider; the evidence from other jurisdictions is much greater; and the research findings I have presented suggest that many Queensland practitioners are ready to debate these issues and to creatively search for solutions and

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241 Ibid, esp 7-8, 9-11.
242 Ibid, 12.
ways forward in the 21st century. It is for the profession to open a respectful and inclusive dialogue.
Information Sheet

RE: THE LIVES OF LAWYERS - an examination of the experiences and attitudes of female and male solicitors in the Queensland legal profession.

Chief Investigator: Professor Richard JOHNSTONE
Director, Socio-Legal Research Centre
Griffith Law School
NATHAN, BRISBANE. 4111.
07 - 3875 3645

PhD Candidate: Ms Geraldine NEAL
P.O. Box 1257
ROCKHAMPTON. 4700.
07 - 4934 4433

Dear Colleague

As you may be aware, I am conducting research into Solicitors in Queensland for the degree of Doctor of Philosophy (Law) at Griffith University. You may also recall that I commenced this project through Deakin University, but I have had the opportunity to transfer my work to Griffith University in Brisbane, where I now work under the supervision of Professor Richard Johnstone (who is the Director of the Socio-Legal Research Centre within the Griffith Law School).

What is the research about?
My research examines what kind of people practise as Solicitors in Queensland, what their working conditions are like, what they feel about the practice of law, and how they cope with the pressures of practice. In turn, this provides some insights into whether the experiences of Queensland Solicitors are similar to those of practitioners in other jurisdictions; whether there are any particular difficulties or disadvantages for women and/or men within our profession; how the Queensland profession’s formal responses to issues compare with responses in other jurisdictions; and it also affords some understanding of the operation of Queensland’s legal workplaces within a ‘best practice’ human resource management context.
Why am I contacting you?
I have already undertaken a random state wide survey of Queensland Solicitors, and much of the extensive data from that survey has now been analysed. I am writing to you now because either –

(a) at the time of the survey, you returned a separate sheet indicating an interest in being involved in any follow-up interview phase of the research. (I confirm that there is no way that I am able to link your name to any individual returned survey document); or

(b) you are a current or former member of the Queensland Law Society Council/Committees/staff and, as such, you are a key person who can contribute to a broader context or framework for the research as you have a particular interest in or knowledge of the conduct of the Solicitors’ branch of the Queensland legal profession, issues of workplace equity for practitioners, and/or practice management issues.

Do you have any obligation to participate?
Whether or not you previously indicated an interest in the interview phase of this research, your participation at this time is completely voluntary. Further, if you decide you would like to participate in an interview but subsequently change your mind, you are free to discontinue participation without any restriction or penalty.

What is involved?
I plan to conduct a series of semi-structured interviews - this means that I will have a number of broad issues that I would like to ask you about, but you may decline to comment on some or all of those issues. I will also give you an opportunity to comment on any other issues that you see as important to the research work I am doing.

The interviews will ideally be done face to face, but where the tyranny of distance dictates I will conduct interviews by telephone. I will - with your written consent - take notes, but also tape record the interviews. Each interview will be identified by a number code only - no names will be attached to an interview tape or transcript and no information will be attributed to any identified individual. You will have an opportunity to check and amend any final interview transcript if you wish to do so.

I anticipate each interview will take about half an hour to an hour. I will work with you to arrange a time that is convenient for you and your work commitments. As a former Solicitor in private practice, I am aware of the time pressures you need to manage.
What happens to the information?
A Research Assistant is likely to be involved in typing up the transcript. The Research Assistant will only have a code number to identify a particular tape or transcript. The Chief Investigator and I will have access to a separate list of code numbers and names to ensure (where requested) the correct transcript is sent to you for approval, but at no stage in the research process will names be attached to tapes or transcripts, and no names will be used in writing up the research.

The information will be used in an aggregated way to add depth and detail to survey statistics; or, for those of you who may not have been involved in returning a survey, to provide some breadth to the back drop or framework of today’s legal profession in Queensland and some of the difficulties and challenges practising Solicitors may face.

Results from this research will be used primarily in the writing of my doctoral thesis, but - as part of my academic work - I may also publish work from time to time in journals, books and/or at conferences. Sometimes those academic activities may attract media attention and press releases. The information that is incorporated in any published work will be based on the major themes, issues and concerns that arise from the survey and the interviews, and not on the views or comments of isolated individuals. There is no intention to in any way focus on individual practitioners or legal firms. Direct quotes may be used from time to time to illustrate an issue and will be presented so as not to identify any individual.

Are there any benefits?
Currently, Queensland is one of the few Australian jurisdictions where similar research has not been carried out. I try to keep the profession generally updated with my research results through Proctor and through relevant Law Society Committees (such as the Equalising Opportunities in the Law, Alternative Dispute Resolution, Law Care), and through writing articles and/or presenting conference papers. Where problems are identified by the research, I will also be trying to suggest management practices that can be instituted or improved to achieve healthier and less stressful workplaces for Solicitors.

You will see that there is also provision for you to request some separate direct feedback from this phase of the research work, should you wish to do so.

Do you have questions or concerns?
Please feel free to contact me or Richard Johnstone if you need any clarification or assistance. If you would like to contact an independent person, please feel free to contact either

*Research Ethics Officer
Office for Research, Bray Centre, Griffith University
Kessels Road, Nathan. Brisbane. 4111
07 - 3875 661
*Pro Vice-Chancellor (Administration)
Bray Centre, Griffith University
Kessels Road, Nathan. Brisbane. 4111.
07 - 3875 7343

Thank you for participating
I will make follow up contact with you soon to confirm whether you would like to be involved in the research interviews. In any event, I would like to thank you for your ongoing interest in this research.

Geraldine Neal
B.A.  LL.B.  Grad.Dip.Mgt.  M.A
Consent Form

RE: THE LIVES OF LAWYERS - an examination of the experiences and attitudes of female and male solicitors in the Queensland legal profession.

Chief Investigator:  Professor Richard JOHNSTONE
Director, Socio-Legal Research Centre, Griffith Law School

PhD Candidate:  Ms Geraldine NEAL
PhD (Law) candidate

I understand that Geraldine Neal is conducting research into Solicitors in Queensland for the degree of Doctor of Philosophy (Law) at Griffith University. I am aware that her research examines what kind of people practise as Solicitors in Queensland, what their working conditions are like, what they feel about the practice of law, and how they cope with the pressures of practice. I understand that Geraldine plans to use her work to provide some insights into whether the experiences of Queensland Solicitors are similar to those of practitioners in other jurisdictions; whether there are any particular difficulties or disadvantages for women and/or men in the Queensland profession; how the Queensland profession’s formal responses to issues compare with responses in other jurisdictions; and to also afford some understanding of the operation of Queensland’s legal workplaces within a ‘best practice’ human resource management context.

I understand that whether I participate in the current interview phase of the research is entirely voluntary and that I can elect to discontinue my participation (without explanation) at any time without any penalty or detriment. It has been explained to me that my participation will be by way of an interview. I understand that Geraldine will take some notes and that she will tape record the interviews - interviews may be face-to-face or by telephone, and will take about half to one hour at a time convenient to me.

I understand that the confidentiality of the interview materials will be strictly maintained. I will not be personally identified in any way in the research and that notes and/or tapes will be marked with a number not a name. I understand there will be a separate list of code numbers and names to ensure transcripts (if requested) can be sent to the appropriate person, but that this list forms no part of the materials that may be incorporated in subsequent publication of the research. I understand information gained during the research process will be used in an aggregated way and that individuals will not be identified. Direct quotes may be used from time to time to illustrate an issue and
will be presented so as not to identify any individual. I understand that research data will be stored in locked cabinets and will be retained in accordance with Griffith University policy for a minimum of 5 years.

I understand that I will receive some feedback from the research work - to comprise of a lay summary of the overall outcomes, and that this will be forwarded to me at the conclusion of the analysis of the material.

I have read the Information Sheet and this Consent Form. I agree to participate in the ‘Lives of Lawyers’ project and I give my consent freely. I understand that the work will be carried out as described in the Information Sheet (which has been retained by me). I realise that whether or not I decide to participate is my decision and will not affect in any way my treatment. I also appreciate that I can discontinue my participation at any time and that I do not have to give any reasons for doing so. I have had any/all questions about this project answered to my satisfaction.

Signed

.................................................................................   ........../........../200......
[Research Participant]

.................................................................................   ........../........../200......
[Investigator]

DETAILS FOR PROVISION OF FEEDBACK

At the conclusion of the analysis of material from the interview phase of the project, please forward the lay summary of overall outcomes to me -

MAIL ADDRESS [business/private] .................................................................
................................................................................
................................................................................
................................................................................

E-MAIL ADDRESS <...............................................................>
<...............................................................>

TELEPHONE CONTACTS ..............................................................................
| APPENDIX 2 | SURVEY INSTRUMENT |
PLEASE COMPLETE THE SURVEY AND RETURN IT AS SOON AS POSSIBLE IN THE REPLY PAID ENVELOPE PROVIDED. THANK YOU.

DEMOGRAPHICS

This type of background information will only be used in an aggregate way, and is helpful in determining whether particular issues arise in particular workplaces; whether certain experiences are more likely to be common to specific age groups or related to the length of time a practitioner has been working within the legal profession; etc. It also provides potential indicators to lead to further lines of inquiry in subsequent research.

Please check (tick or cross) the appropriate box:

1. SEX
   MALE
   FEMALE

2. AGE
   20 - 29
   30 - 39
   40 - 49
   50 - 59
   60 +

3. WORKPLACE
   Private firm Solicitors
   [Total number of lawyers .......]
   Other .....................
   ................................

4. POST CODE: **** (of your workplace)

5. POSITION
   Partner/Principal
   Solicitor, employed
   Other
   Admitted 19.....
   Admitted 19.....
   ................................

6. BACKGROUND
   Were your parents professionals (e.g. lawyer, doctor, engineer, teacher, etc.)?
   Father YES NO
   Mother YES NO

   p.t.o.

   Did you attend a private school (for at least part, if
not all, of your secondary schooling)?

YES  NO

Did you pursue other career/employment before doing law?

YES  NO

If yes, please specify:
Teacher
Public Servant (Justice/Crown Law)
Public Servant (Other)
Other Professional
Other Non-Professional
Other............................................

Are you currently studying at tertiary level?

YES  NO

If yes, please specify:
Completing LL.B. or legal professional
Higher qualification in law (LL.M. or Dip.)
Other than law (with view to career change)
Other than law (to enhance current skills)
Other than law (personal interest only)

Please feel free to add any comments:
............................................................................................................................
............................................................................................................................
............................................................................................................................
............................................................................................................................
............................................................................................................................
............................................................................................................................

7. Do you have CHILDREN? No children / or ...... (number) children
If children, please check relevant box/es: preschool    primary    secondary    tertiary    adult/independent

SO WHY LAW?

In this section of the survey, you can indicate as many or as few reasons as are appropriate to your situation. If you select more than one, please number them in order of significance - the most significant being 1, the next most significant being 2, etc. If you feel some reasons are of equal significance to you, you can allocate the same number to them. Again, please feel free to add your own reasons or make any comments.

8. Regardless of whether or not law as a career has lived up to your expectations, why did you initially decide to become a lawyer?

Other lawyer/s in family       ......
Family pressures               ......
Wanted a high income/prestige profession  ......
Wanted to help people/make a difference' 
School results gave entry to University law 
Best of available options at the time 
No particular reasons/friends decided to do law 
Career offered flexible options (in terms of ability to pursue other interests/studies/home & family/etc) 
Always fascinated by idea of law and lawyers 
Other ........................................................................

9. Why do you continue to be a lawyer?

Personal satisfaction and enjoyment 
Would like to change, but don’t have alternatives 
Would like to change but debt/finances won’t permit it 
Allows flexibility to be involved in other things (including home/family commitments) 
Enjoy the high status/high income 
Find it exciting, challenging - never boring 
Enjoy highly competitive nature of the work 
Provides way to help others less privileged - offers way to make a difference in society 
Opportunity to meet range of people (profession, clients, general public) 
Intellectually invigorating 
Other ........................................................................

Comments 
............................................................................................................................
............................................................................................................................
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A DAY IN THE LIFE OF A LAWYER

The next few questions explore what day to day life as a lawyer is like for you. You are asked to consider various propositions and situations and indicate whether a particular statement is applicable - using a continuum from 1 to 5 (where 1 represents ‘never’ and 5 represents ‘always’). Please place a circle around the number that best represents your response.

10. How do you feel you are treated in your workplace?

* By administrative/support staff -

<table>
<thead>
<tr>
<th>Statement</th>
<th>never</th>
<th>sometimes</th>
<th>always</th>
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<td>with respect &amp; cooperation</td>
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<td>work given appropriate priority</td>
<td>1 ..... 2 ..... 3 ..... 4 ..... 5</td>
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<td>queries are answered</td>
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<td>requests are acted upon</td>
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feel welcome, included
* By other lawyers -
with respect & cooperation
work is valued - seen as
important member of team
subject to unfair criticisms
fair share of interesting &
challenging work
queries are readily answered
feel welcome, included
feel comfortable raising any
non-work problems/difficulties
(e.g. home/family problems)
feel need to work harder/
produce more/take less time off
than peers
included in informal social
gatherings (eg casual lunch,
drinks after work, weekend golf,
family bbq, etc)
consulted about workplace decisions
that affect you
* By other professionals (e.g. outside lawyers, accountants, bank
managers, police officers, engineers, etc) -
with respect & cooperation
work is valued
consulted/invited to make
contributions
ignored/isolated
included in social activities
* By clients -
with respect & cooperation
work is valued
unreasonable demands
undeserved criticism/aggression
they want ‘something for nothing’

Still considering the day to day environment in which you work, the following
questions ask you to provide some detail about the **formal structures and
policies** of your particular workplace. Please check the appropriate boxes,
but feel free to add any comments or raise any fresh issues:

11. Do the following exist in your workplace? YES NO If yes, do you feel able
to use such a policy YES NO
No-smoking policy
Part-time work
Job sharing
Parental leave - Paid
Parental leave - Unpaid
Flexible working hours
Holiday scheduling to take account of family needs (e.g. school holidays)
Emergency leave (e.g. death in family, sick child, etc)
Scope to regularly participate in some sporting activity (e.g. golf, gym, touch football)
Paid personal sick leave

Comments..........................................................................................................................
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12. If you answered no to the availability of flexible hours and emergency leave; or, you answered yes, but you don’t feel personally able to utilise these policies, what do you do if there is some personal crisis or family emergency?

Take the time anyway (and worry about the office reaction)
Take the time but ‘disguise’ it as legitimate sick leave/holiday leave
Just keep working (and worrying about the crisis/emergency)
Call on family members/friends to fill the gap
Spouse/partner on the home front takes over
Spouse/partner takes time from their work
Don’t see this as an issue

Comments
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13. Do you feel you have equal access (with your peer group in your organisation, or generally in the profession) to the following -

Particular salary level/benefits

Promotion/partnership
Office space & facilities
Secretarial/administrative support
Access to seminars/conferences
Invitations to official professional activities (e.g. meetings, dinners)

YES       NO
14. Does your organisation have a workplace anti-discrimination policy?  

YES  NO  DON’T KNOW

If yes, is it -  
In writing
Readily accessible to all
Provided to all on joining

Does your organisation have a workplace anti-sexual harassment policy?  

YES  NO  DON’T KNOW

If yes, is it -  
In writing
Readily accessible to all
Provided to all on joining

Does your organisation have a set workplace grievance procedure?  

YES  NO  DON’T KNOW

If yes, is it -  
In writing
Readily accessible to all
Provided to all on joining

Does your organisation have a nominated person/s (i.e. other than professional body contacts/counsellors outside your workplace) to whom you can go to confidentially discuss any problems related to your work, your ability to cope with work demands and pressures, your career plans?  

YES  NO  DON’T KNOW

If yes, would you feel comfortable in approaching such a person?  

YES  NO

If no, why not
............................................................................................................
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Have you ever encountered problems in your workplace (either personally or aware of someone else) related to inappropriate questions when interviewed for position, discriminatory work practices, sexual harassment, unfair preference in allocation of work/clients?  

YES  NO

If yes, please give details
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WHEN THE DAY IS OVER

What does being a lawyer mean in terms of your day to day life away from the workplace - what implications, if any, does it have for your health and well being? Please check those boxes that best reflect your situation, and add any comments if you wish to do so.

15. Do you find your work:  

YES  NO
Physically exhausting
Intellectually taxing
Emotionally draining
Psychologically stressful
Consumes most of your life

16. Do you take work home:
17. What do you do to cope with work pressures?

- Not an issue, as don’t feel undue pressure
- Spend time with friends
- Play sport
- Walk/jog/run
- Particular focus on a healthy diet
- Enjoy quality time with family
- Meditate
- Use alcohol/prescription drugs to assist sleep and/or relaxation
- Use (illegal) recreational drugs
- Do nothing at home to give time to recuperate
- Sleep a lot
- Other .................................................................

Would like to do some of the above; or, would like to do some on a more regular basis, but can’t because -

- Need to do household/domestic chores
- Need to care for children
- Need to care for/assist other family members
- Don’t have any time after work to spend time on doing things for self

Comments
.........................................................................................................................................................
.............................................................................................................................................................
.............................................................................................................................................................  p.t.o.

DOES OUR TYPE OF LAW REQUIRE A PARTICULAR KIND OF LAWYER?

Our legal system is based on an adversarial model. Some commentators believe the adversarial process is not confined to the courtroom, but tends to shape the general approach of lawyers to their work. (Naffine, 1990, 74)

18. Please consider the following propositions and indicate (on a 1 to 5 continuum) your agreement or otherwise with a circle around the relevant number - from disagree strongly 1, disagree 2, not sure 3 (which may reflect the fact that you are undecided about the proposition, or that your lack of experience in relation to a specific proposition means you are unable to comment), agree 4, to agree strongly 5.

- The adversarial approach is the best way to solve disputes 1 ........ 2 ....... 3 ....... 4 ....... 5
- The introduction of various forms of
alternative dispute resolution (adr) is a positive step for lawyers
There should be a stronger emphasis on adr generally
ADR is only suitable in limited areas (e.g. family law)
It is less stressful for lawyers to be involved in an adr process than the traditional adversarial process
Traditional legal training does not equip lawyers to work effectively in adr processes
Legal education needs to embrace practical negotiation and mediation skills training
The adversarial system requires lawyers to engage in competitive behaviour on behalf of clients
The adversarial/competitive approach is a more exciting & challenging way to work (than a mediated/adr approach)
The adversarial system is better understood and respected (than adr) by clients and the general public
Various forms of adr are more compatible with concepts of fairness and social justice
Socially/economically underprivileged clients are better able to access adr processes than the traditional legal system
ADR is not something ‘real’ lawyers do

19. In your opinion what particular attributes are needed for recognition (by peers, clients, public) as a good lawyer?

Please consider the following list and indicate, in order of significance (the most significant being 1, the next most significant being 2, etc) the five most important traits for a lawyer. (You may indicate more than five if you wish to do so. If you feel some traits are of equal significance please feel free to allocate those the same number.)

independent/able to work alone
high intellectual ability
effective management skills
assertive
motivated & persistent
strong leadership qualities
practical & adaptable
skilled negotiator
good interpersonal relationships
strong communication skills
plenty of common sense
enthusiastic

strong social conscience
creative problem solver
high ethical standards
‘people person’
logical thought/clear
expression
good memory/attention to detail
competitive
hard working
other
other
20. In your opinion, are male lawyers or female lawyers - or neither - better at the following? Please check the relevant box for each category -

- making tough decisions
- taking ethical approach to situations
- being more in touch with feelings (of colleagues, staff, clients)
- having strong sense of social justice
- communicating (with colleagues, staff, clients)
- managing conflict
- managing people (staff, clients)
- adapting to new computer technology
- embracing new management/office systems and processes
- keeping up to date with changes in law
- contributing to staff/office morale
- working within alternative dispute resolution (mediation, conciliation, etc)
- dealing with workplace stress
- promoting the legal profession
- working overtime to get the job done

21. Whether or not you would describe yourself as ‘successful’, what do you think are the characteristics that best define success in a lawyer?

Indicate as many or as few as you wish, but please number them in order or significance (the most significant being 1, the next most significant being 2, etc). If you feel some characteristics are of equal importance, you can allocate the same number to them.

- honest
- competitive
- hard working
- strict ethical standards
- respected by peers/clients
- public
- works cooperatively with others
- high fee earner/high income
- has prestige car, home, etc
- community status and influence
- healthy and happy lifestyle
- meaningful personal relationships
- assists less privileged

- open to change/new experiences
- achieves personal goals
- high academic achievement
- ambitious
- high profile clients
- name on letterhead
- family connections
- working for particular firm/organisation
- other
- other
22. Do you see yourself as successful?    Yes  No

23. Which word in each pair best describes your workplace? - please indicate the preferred word in each pair (and/or add other words you feel may better describe your work environment)

<table>
<thead>
<tr>
<th>Hostile</th>
<th>Friendly</th>
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<tbody>
<tr>
<td>Lonely</td>
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<td>Exciting</td>
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<tr>
<td>Old fashioned</td>
<td>Innovative</td>
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</table>

24. Please feel free to add any comments about the survey -

Thank you for taking the time to complete this survey. If you are interested in the possibility of participating in a further stage of this research in the future by way of giving an interview (on a strictly confidential basis), please indicate your name and preferred contact details here:

NAME:...............................................................  
ADDRESS: ..........................................................  
TELEPHONE CONTACTS: ...........................................

This information will not be used in conjunction with your survey responses.

If you do not want to participate in any further research, but are interested in future feedback from this stage of the project, please complete the separate tear-off request sheet below. This sheet will also be stored separately and will not be used in conjunction with the information you have just provided in the survey. Please return the tear-off request sheet in the survey return envelope (or, if you prefer, post it to me separately).

If you have any queries, please do not hesitate to contact me. Thank you again for your participation.
THE LIVES OF LAWYERS

I do not wish to participate in any further phase of the research, but I am interested in receiving feedback from the survey stage of the project when it is available. Please send to:

Name: ..................................................

Address: .............................................................................
.............................................................................
.............................................................................

Telephone: .................................................................

TO:  G.M. NEAL
     P.O. BOX 1257, ROCKHAMPTON. 4700
| APPENDIX 3 | INDICATIVE LIST OF INTERVIEW ISSUES and QUESTIONS |
APPENDIX 3: INDICATIVE LIST OF INTERVIEW ISSUES and QUESTIONS

While different lawyers see ‘success’ differently, do you think there are particular strategies that lawyers adopt to achieve success? - are these different for women and men?

It has been suggested there is an ‘invisible’ rule book for things as varied as dress code - corporate/client entertaining - being involved in District Law Associations, Law Society Committees, standing for Council. Do you agree? Are there different pressures on/considerations for women and men in these areas?

When practitioners were asked (in the survey) how they felt they were treated at work by admin staff/other lawyers/other professionals, a statistically significant proportion of women felt they were treated with less respect and co-operation - were less valued and supported - than men. Does this surprise you? Why?

Women are graduating from law schools in large numbers, but those numbers are not reflected on the letterhead - women are not making it to partners. Why do you think this is so?

More women than men reported instances of inappropriate questions when interviewed, discriminatory work practices, sexual harassment and/or unfair preference in the allocation of work. Is this your experience? - the experience of others you know about?

There has been considerable media coverage and discussion lately about equitable briefing policies for women barristers (esp. in Vic & NSW) - Do you think there is a need for some kind of equal opportunity guidelines for Queensland solicitors ?- how might such guidelines work?

Survey results show many Queensland law firms don’t have formal workplace policies (discrim. sex. harass. grievance). Does this surprise you? Why?

Survey results indicated that women were far more likely to believe that the adversarial approach was not the best way to resolve disputes , that the introduction of a.d.r. was a positive step for lawyers, and that there should be a stronger emphasis on a.d.r. By contrast, men saw the adversarial approach as ‘more exciting/challenging’. Do you think women and men practise law differently? Do you see one approach as better than the other?
The survey indicated that women were more likely to view their workplace in **negative** terms - lonely, competitive, unfair - Why do you think this is so?

Do you think the **reality** of practice matches the image you had before you started? In what ways is it different? similar?

The survey indicated far more practitioners saw themselves as able to access **flexible working hours** to participate in sport than they could to attend to family responsibilities? Why do you think this is so?

In what ways could the practice of law be **made more accessible** e.g. to *people from different backgrounds - *solicitors with young children - *solicitors wanting to move in and out of the profession for family reasons?

Is it possible for **strategies** like flexible work practices and job sharing to work within the profession? Why? What else could be done?

Do you believe there is a **gender bias** in our profession? Do you believe women are disadvantaged in any way within the profession? Why? If yes, how does this mainly manifest itself from your **perspective**? How would you like that to be addressed?

What, if anything, do you think the Queensland law Society could - or should - do to address some of these issues or concerns?

If you could stop being a Solicitor would you? Why? **What else** would you do?

Are there **other issues** you see as important to a study of how women and men experience their lives as Solicitors in Queensland?

What is your age? how many years in practice? what kind of practice do you work in? [or What is/was your role at the Law Society?]

WOULD YOU LIKE THE OPPORTUNITY TO SEE A TRANSCRIPT OF THIS INTERVIEW BEFORE THE MATERIAL IS INCORPORATED WITH OTHER TRANSCRIPTS AND RESEARCH FINDINGS? IF YES - SPECIFY ARRANGEMENTS TO SEND TO PARTICIPANT -

...........................................................................................................................................................................
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| APPENDIX 4 | AUSTRALIA POST METROPOLITAN-REGIONAL POSTCODES DIVISION |
### APPENDIX 4: POSTCODES

**QLD Postcode classifications.xls**

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Appendix 4: Australia Post metropolitan-regional postcodes division
| APPENDIX 5 | CHAPTER 3 – SURVEY SAMPLE DEMOGRAPHIC DATA (NON-WORK) |
APPENDIX 5: CHAPTER 3 – SURVEY SAMPLE DEMOGRAPHIC DATA (NON-WORK).

In Chapter 3, I discuss the demographic data generated by the Queensland-wide survey. I grouped the data into what I termed the work demographics of the research sample and the non-work demographics. Chapter 3 sets out fully the work data. In this Appendix I set out what I describe as the non-work, or personal, demographic data. These are summarised in the Table below –

Appendix 5, Table 1: Q6-Q7 Demographics research sample (non-work)

| Research Sample Q6-Q7 (non-work background demographics) | FEMALE | | | MALE | | | TOTAL | | |
|----------------------------------------------------------|--------|---|---|--------|---|---|----------------|---|
|                                                          | N      | % | N  | %      | N | %  |                   |   |
| Professional parent                                      |        |   |    |        |    |    |                   |   |
| yes                                                      | 55     | 50.00 | 34  | 35.42  | 89 | 43.20 |                   |   |
| no                                                       | 55     | 50.00 | 62  | 64.58  | 117 | 56.80 |                   |   |
| Total                                                    | 110    | 100.00 | 96  | 100.00 | 206 | 100.00 |                   |   |
|                                                          |        |   |    |        |    |    |                   |   |
| Private school                                           |        |   |    |        |    |    |                   |   |
| yes                                                      | 64     | 58.72 | 68  | 70.83  | 132 | 64.39 |                   |   |
| no                                                       | 45     | 41.28 | 28  | 29.17  | 73  | 35.61 |                   |   |
| Total                                                    | 109    | 100.00 | 96  | 100.00 | 205 | 100.00 |                   |   |
|                                                          |        |   |    |        |    |    |                   |   |
| Prior career                                             |        |   |    |        |    |    |                   |   |
| yes                                                      | 29     | 26.85 | 22  | 22.92  | 51  | 25.00 |                   |   |
| no                                                       | 79     | 73.15 | 74  | 77.08  | 153 | 75.00 |                   |   |
| Total                                                    | 108    | 100.00 | 96  | 100.00 | 204 | 100.00 |                   |   |
|                                                          |        |   |    |        |    |    |                   |   |
| Current studies                                          |        |   |    |        |    |    |                   |   |
| yes                                                      | 17     | 16.19 | 8   | 8.33   | 25  | 12.44 |                   |   |
| no                                                       | 88     | 83.81 | 88  | 91.67  | 176 | 87.56 |                   |   |
| Total                                                    | 105    | 100.00 | 96  | 100.00 | 201 | 100.00 |                   |   |
|                                                          |        |   |    |        |    |    |                   |   |
| Children                                                 |        |   |    |        |    |    |                   |   |
| yes                                                      | 33     | 30.56 | 62  | 64.58  | 95  | 46.57 |                   |   |
| no                                                       | 75     | 69.44 | 34  | 35.42  | 109 | 53.43 |                   |   |
| Total                                                    | 108    | 100.00 | 96  | 100.00 | 204 | 100.00 |                   |   |

As the Table shows, there were some differences between women and men in respect of whether they had attended a private school, had pursued a prior career, or were
undertaking current studies.\textsuperscript{1} Women were significantly more likely than were men to have at least one professional parent.\textsuperscript{2} Men were significantly more likely than their female colleagues to be pursuing their legal careers and to have children than were the women in the study.\textsuperscript{3} I have highlighted these two factors in bold in the Table for ease of reference.

The significant issues around children are explored more fully in Chapter 3 of the thesis.

\textsuperscript{1} Note: although men were more likely to have attended a private school and women were more likely to have had a prior career, and also to be undertaking current studies, these differences were not statistically significant.

\textsuperscript{2} Professional parent $MW-U=4510.00 \ Z=-2.1027 \ p=0.035$. The example/encouragement of such a parent may have compensated for the fact that women are less likely to have career mentors (formal or informal) than are men.

\textsuperscript{3} Children $MW-U=3420.00 \ Z=-4.8513 \ p=0.000$. 
| APPENDIX 6 | CHAPTER 3 – DEMOGRAPHIC FACTORS RELEVANT TO WHY WOMEN AND MEN BECOME LAWYERS |
Chapter 3 sets out the top five reasons women and men ranked for becoming lawyers. The Table below shows all the items that were listed on the survey as possible reasons. Participants were asked to indicate those reasons that were of the greatest importance or significance to them (noting as many, or as few, as they wished).

For each reason, the Table details the number and percentage of respondents who ranked a particular characteristic in their ‘top five’. The five ‘most popular’ listed reasons for women and for men do differ slightly. The order columns included in the Table provide a ready indicator of the most popular inclusions in the top five for women and men (e.g. 38 percent of women ranked ‘help people’ in their top five, shown as the number 1 reason in the females order column; 36 percent of women ranked ‘fascinated by law’, shown as number 2 in the order column; and so on).

**APPENDIX 6 TABLE 1: Q8 – Reasons to become lawyer**

<table>
<thead>
<tr>
<th>Q8 Reasons to become lawyer</th>
<th>FEMALES</th>
<th></th>
<th>MALES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>Order</td>
<td>N</td>
</tr>
<tr>
<td>help people/make a difference</td>
<td>42</td>
<td>38.18</td>
<td>1</td>
<td>29</td>
</tr>
<tr>
<td>fascinated by law/lawyers</td>
<td>40</td>
<td>36.36</td>
<td>2</td>
<td>34</td>
</tr>
<tr>
<td>school results gave entry to law</td>
<td>38</td>
<td>34.55</td>
<td>3</td>
<td>26</td>
</tr>
<tr>
<td>high income/prestige</td>
<td>34</td>
<td>30.91</td>
<td>4</td>
<td>31</td>
</tr>
<tr>
<td>best option at time</td>
<td>26</td>
<td>23.64</td>
<td>5</td>
<td>42</td>
</tr>
<tr>
<td>other/individual reasons to become lawyer</td>
<td>26</td>
<td>23.64</td>
<td>5</td>
<td>19</td>
</tr>
<tr>
<td>family pressures</td>
<td>13</td>
<td>11.82</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>lawyers in family</td>
<td>12</td>
<td>10.91</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>flexibility for other interests/family</td>
<td>10</td>
<td>9.09</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>no reason/followed friends</td>
<td>7</td>
<td>6.36</td>
<td>9</td>
<td>10</td>
</tr>
</tbody>
</table>

In only one case was there a statistically significant difference between women and men in their reasons to choose law as a career. Men (43.75 percent) were far more likely than women (23.64 percent) to list best available option at the time (marked in
bold on the Table) in their top reasons. There were also some statistically significant differences within the groups of women and of men when the results were analysed using the survey demographic data, and these are footnoted below.

Participants were also given an opportunity to list any other/alternative reasons they had for deciding to become lawyers, and a number of solicitors took the opportunity to do this, using their own words to describe the various motivations that drove them. These reasons were as varied as the individual participants, ranging from t.v. lawyer programs to scope for deductive reasoning. Nevertheless, it was possible to group the 45 nominated reasons into six broader categories, as the Table below illustrates.

**Appendix 6 Table 2: Q8 – Other reasons to become lawyer**

<table>
<thead>
<tr>
<th>Q8 - other reasons to become a lawyer</th>
<th>Females</th>
<th>Males</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>desire to do good in world</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>income related</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>external influences (family, friends, popular culture)</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>intellectual attractions/challenges</td>
<td>5</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>other studies (school/university) or aptitudes opened way</td>
<td>10</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>benefit/fit with broader career and study plans</td>
<td>6</td>
<td>8</td>
<td>14</td>
</tr>
<tr>
<td>Total Additional Reasons given by survey participants</td>
<td>25</td>
<td>20</td>
<td>45</td>
</tr>
</tbody>
</table>

1 MW-U=4218.00 Z=-3.005 p=0.002.
2 Younger women (Female: 20-29 age N=19, 44.20%; 30+ age N=15, 22.40% $\chi^2=5.827$ df=1 $p=0.014$) and those without a professional parent (Female: no professional parent N=22, 40.00%; yes professional parent N=12, 21.80% $\chi^2=4.257$ df=1 $p=0.031$) were more likely to list high income/prestige as one of the main reasons for doing law than were respectively their older female colleagues, or their female colleagues who had listed having at least one parent who was/had been a professional. Women who were not undertaking current studies were more likely to advise that their school results had not been a prime reason for their entry into law (Female: yes current studies N=11, 64.70%; no current studies N=25, 28.40% $\chi^2=8.831$ df=1 $p=0.005$) than were women who were studying. Both women and men who came to law after having a prior career were far more likely to state that their school results had not provided an entry into law than were their respective female and male colleagues who did not have a prior career (Female: yes prior career N=4, 13.80%; no prior career N=34, 43.00% $\chi^2=7.955$ df=1 $p=0.003$; Male: yes prior career N=2, 9.10%; no prior career N=24, 32.40% $\chi^2=4.679$ df=1 $p=0.024$). While this makes obvious sense, (as presumably the latter group were able to move straight from school into their legal studies), it is a testament to the commitment of those who may have arrived at law by a more circuitous route.
Some of the solicitors I interviewed expressed concerns that some young people were choosing to study law without a strong commitment to the law as a profession, rather being pushed into it by parents or schools who pointed to their high academic achievements divorced from any interest in, or passion for, law as their future career.

One senior associate expressed it this way –

*I didn’t really have a clue when I started ... I didn’t really want to do law originally. I [did well at] school and I was taken into the headmistress’ office and told: “[if you] don’t do arts, what else are you going to do?” And I didn’t have any maths or science so I had to do law. I didn’t particularly like law.*

[woman – 30s – senior associate – metropolitan]

It is beyond the scope of this thesis to explore this further, but I suggest motivations to become solicitors is an important area for future investigation. I see such research to be one of a number of measures aimed at stemming the loss of solicitors from the Queensland profession.

What is clear from both my survey data and interviews with practitioners is that while many lawyers enter the profession for altruistic reasons, very few enter for reasons of flexibility in their lives and I suggest that is because the stories of pressure and long hours have preceded them. Many solicitors I interviewed expected a high pressure work environment, although few were fully prepared for what they described as the tedium of *filling in forms and shuffling paper,* and the unrelenting nature of the long hours and stress.

One of the key challenges for the private profession is the fact that, despite their initial ideals and hopes, lawyers don’t stay. During interviews I asked participants whether the reality of legal practice matched their prior expectations. Very few said that it did. Most said they had *absolutely no idea* what to expect, or that their

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3 I(f)44: 20.
4 It was also an issue nominated as essential for future consideration by the West Australian profession in its study of lawyer retention – discussed more fully in this Chapter, Sub-Section 3.7.3 Western Australia, p 3-35.
5 Many solicitors spoke passionately about their desire to *help people* as a primary reason to study law. The reasons lawyers give as to why they stay are examined in more detail in Chapter 6, but it was disturbing to see that many nominate negative reasons for staying i.e. they remain in the profession because of the financial constraints they face and/or or because they have no other options. See: Chapter 6, Section 6.9 Staying in the Main Game, p 6-33ff.
expectations were a complete mismatch with the reality they encountered. Some expressed high levels of dissatisfaction and disenchantment, such as these two practitioners voiced –

\[
\text{Once you’ve done it for 30 years you’re lucky if you get a challenge once a week. The rest of it’s just \ldots mundane. To a degree it’s always been repetitive \ldots I guess it’s just not as challenging or as exciting anymore.} \\
[\text{man – 50s – principal – regional}]^7
\]

\[
\text{If I could find something else to do that would pay me as well, I’d be out of here tomorrow. I’ve been doing it for 20 years and I don’t think there are the challenges, intellectual challenges. I don’t get excited by the stuff that comes my desk any more} \\
[\text{woman – 40s – consultant – metropolitan}]^8
\]

Many ruefully wondered how they had lasted so long: *sometimes I wonder what on earth I’m still doing here, I really do \ldots It’s a very unforgiving profession.* While others admitted to an ongoing ambivalence about their profession: *like life itself, it has incredible wondrous moments, and some of the lowest moments you could ever experience \ldots* \(^{10}\)

As we have seen, women are particularly likely to leave the profession. One lawyer who participated in the interview phase of the project recalled this incident –

\[
\text{I was sitting in a shopping centre \ldots and behind me was a table of \ldots university students who were studying law and they were in their final year\ldots talking about how exciting it was \ldots and the jobs and the things they’d be doing and everything. And I was sitting there thinking: well, one, I don’t have that enthusiasm anymore; and it’s not stunning, not glamorous - and, two, I almost felt sorry for them because \ldots the reality is nothing like what students, or other people, and society, think it’s like. It’s hard and it’s stressful} \\
[\text{woman – 30s – senior associate – city}]^{11}
\]

Subsequent to this interview, this solicitor made contact to tell me she had made the happy choice to leave the profession. Her story stands out because I knew what happened to her. More commonly, we do not know ‘what happens to the women?’ or

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{}^6 \text{For example: I(m)30 15-17; I(f)37:14; I(m)42:15-16; I(f)44: 19-21; I(f)77: 11.}

{}^7 \text{I(m)47: 4}

{}^8 \text{I(f)48: 16}

{}^9 \text{I(f)76: 14 [woman – 30s – employed solicitor – metropolitan]}

{}^{10} \text{I(m)72: 7 [man – 40s – principal – metropolitan]}

{}^{11} \text{I(f)46: 20. ‘Glamorous’ was a word that many solicitors used when describing their prior images of the profession. No one used it to describe the ‘reality’.}
‘why?’ These are critical human resource management questions the profession needs to address. Chapter 3 canvasses some of the issues around the ‘disappearing’ women as they arose in my research.
| APPENDIX 7 | CHAPTER 3 – INVOLVEMENT OF WOMEN IN QUEENSLAND LAW SOCIETY MANAGEMENT AND COMMITTEE ROLES |
Chapter 3 sets out details of the number of women solicitors in Queensland and also the extent of their involvement in the Society’s governing Council. In this Appendix, I set out details of the numbers of women involved in Society management positions, and also as Chairs of the various Committees and Sections.

The Queensland Law Society’s 2006-07 annual report sets out the organisational structure\(^1\) and describes the key internal management functions. The Senior Management Team\(^2\) is headed by the Chief Executive Officer, and comprises the Society Secretary, the Society General Counsel, and the Directors of Professional Standards, Finance and Information Technology, and Membership and Corporate Services, as well as the Principal Advisor for Corporate Relations. Except for the latter, each of these seven positions has a variety of departmental heads that reports directly to them. Men hold all seven of these senior roles. There are three other positions on the Senior Management Team. These three Managers (of Human Resources, Marketing and Communications, and Special Projects) have no direct reports while they themselves report directly to the CEO. Women fill these three management positions.

The Queensland Law Society (QLS) also has an extensive Section and Committee system. QLS staff service and support these groupings to varying degrees depending on the workload and significance of a particular group’s activities in the context of the Society’s current policy interests and emphases. The ‘Section/Committee Reports’ in the 2006-07 annual report shows there are 16 broad Section areas.\(^3\) Women chair only three of these 16 Sections and these are Family Law, Government Lawyers, and Young Lawyers.

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\(^2\) Ibid, 13.

A few of the Sections have separate Committees that work within the broader Section areas. Hence the Business Law Section acts as an umbrella for six Committees. Two of these six Committee Chairs are women (Intellectual Property and Information Technology, and Industrial Law). The Property and Development Law Section includes two Committees and neither of these is chaired by a woman.

The Queensland Law Society’s only committee or section that is directly concerned with issues of women in the profession, gender equity, work family balance, retention of young lawyers and the inclusiveness of the profession generally (and with specific regard for indigenous lawyers, lawyers with disability, lawyers from a non-English speaking background) is the Equalising Opportunities in the Law (EOL) Committee. This Committee is listed under the Practice Development and Management Section. The Committee has a female Chair.

When the Society conducted a detailed overview of its then committee structure in 2004, the role of women in the profession and issues of gender equity and equality of opportunity were not seen as significant enough to have Section status. In the course of this research project, some solicitors told me that they initially believed the EOL Committee had ‘disappeared’ in the restructure. The EOL Committee emerged under the umbrella of the Practice Development and Management Section. This was welcomed by some practitioners as a potentially positive move that reflected the significance of equal opportunity issues in every facet of legal practice management. However, there appear to have been no joint initiatives or consultations between the Section and the Committee and no requests by the Section for Committee input. Some solicitors complained that for some months under the new structure, the EOL Committee received no formal QLS staff secretarial support or assistance.

The underrepresentation of women across the Tasman in the New Zealand Law Society committees and council was discussed in a 1996 publication examining the

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4 The Committees under the Business Law Section umbrella are: Intellectual Property and Information Technology, Franchising, Banking and Financial Services, Revenue Law, Insolvency Law, and Industrial Law.
5 The Committees under the Property and Development Law Section are: Construction and Infrastructure, and Planning and Management.
status of women within that country. Similar problems to those mentioned in my research were canvassed, particularly the vexed issue of unequal representation of women in the various law society structures. While women pointed to the ‘maleness’ of organisations, the organisations were quick to respond that women were less likely to put their names forward for consideration. This is a complex issue, but it is suggested that the Queensland profession needs to open up dialogue about ways the formal professional structures can become more inclusive and representative.\(^6\)

| APPENDIX 8 | CHAPTER 4 – ARE WOMEN OR MEN BETTER AT CERTAIN WORKPLACE FUNCTIONS |
Chapter 4 examines the findings from Survey Question 20 which asked whether women, or men, or neither, were better at a range of workplace related functions. Table 4.1 sets out some of the findings, specifically as they potentially relate to the caring or nurturing role traditionally ascribed to women.

This Appendix briefly considers the other functions canvassed by Question 20. There were no statistically significant differences as between women and men in their responses to other sections of this survey question. However, in some cases women, or men, were likely to see one group as better than another at a specific function.

Women were more likely to claim better interpersonal skills around managing conflict, managing people, and working with alternative dispute resolution as well as adapting to new computer technology and embracing new management/office systems and processes. Some men agreed women were better at working with alternative dispute resolution processes and also in adapting to new technology and to new management systems (the latter two being perhaps an interesting comment on women’s usual subordinate, secretarial, or helpmeet role). But, some men clearly took the view that they had better skills than did their female colleagues in managing people and managing conflict.

1 Managing conflict Women: men better N=20, 18.35%; women better N=43, 39.45%; no difference N=46, 42.30%. Men: men better N=29, 30.85%; women better N=10, 10.64%; no difference N=55, 58.51%.
2 Managing people Women: men better N=8, 7.34%; women better N=54, 49.54%; no difference N=47, 43.12%. Men: men better N=18, 19.35%; women better N=15, 16.13%; no difference N=60, 64.52%.
3 Working with a.d.r. Women: men better N=3, 2.78%; women better N=19, 17.59%; no difference N=86, 79.63%. Men: men better N=2, 2.13%; women better N=12, 12.77%; no difference N=80, 85.11%.
4 Adapting to computer technology Women: men better N=13, 12.04%; women better N=26, 24.07%; no difference N=69, 63.89%. Men: men better N=8, 8.70%; women better N=14, 15.22%; no difference N=70, 76.09%.
5 Embracing new office systems Women: men better N=4, 3.67%; women better N=28, 25.69%; no difference N=77, 70.64%. Men: men better N=3, 3.19%; women better N=17, 18.09%; no difference N=74, 78.72%.
Men were more likely to report they saw themselves as better at making tough decisions,\(^6\) and this was supported by some of their women colleagues. Men were also more likely to consider themselves better at working overtime to get the job done,\(^7\) although the strong result was for both women and men to see no real difference between female and male approaches to these two issues. Similarly, women and men gave very similar responses to keeping up to date with changes in the law\(^8\) and managing workplace stress.\(^9\)

I suggest that the figures set out in Chapter 4, and in this Appendix, also speak to the mismatched understandings that women and men may have about the contributions each brings to the practice of law.

\(^6\) Making tough decisions. Women: men better N=14, 12.73%; women better N=5, 4.55%; no difference N=91, 82.73%. Men: men better N=11, 11.70%; women better N=1, 1.06%; no difference N=82, 87.23%.

\(^7\) Working overtime. Women: men better N=21, 19.09%; women better N=17, 15.45%; no difference N=72, 65.45%. Men: men better N=18, 19.15%; women better N=2, 2.13%; no difference N=74, 78.72%.

\(^8\) Keeping updated. Women: men better N=7, 6.36%; women better N=7, 6.36%; no difference N=96, 87.27%. Men: men better N=4, 4.26%; women better N=6, 6.38%; no difference N=84, 89.36%.

\(^9\) Dealing with stress. Women: men better N=19, 17.43%; women better N=22, 20.18%; no difference N=68, 62.39%. Men: men better N=16, 17.02%; women better N=14, 14.89%; no difference N=64, 68.09%. The very real concerns about workplaces pressures and stress will be dealt with in more detail in the next Chapter.
In Chapter 5, I set out the effects of work pressure in Table 5.1. These were interrogated against the full range of demographic factors canvassed in the survey.\textsuperscript{1} Women were far more likely than their male colleagues to report that their work was psychologically stressful.\textsuperscript{2} While women generally considered their work to be psychologically stressful regardless of any other individual demographic factors, men who reported having a prior career were less likely than their ‘law is my only career’ brothers to report psychological stress.\textsuperscript{3}

Broadly, other findings (physically exhausting, intellectually taxing, emotionally draining, work consumes most of life) were unaffected by age, firm size, geographic location, position within a legal firm, individual background (parents, schooling, prior career, additional study), or whether or not a solicitor had children, although there were some exceptions.

One was that women within rural and regional areas of the state (93.90 percent) were far more likely than their metropolitan sisters-in-law (73.00 percent) to describe their work as emotionally draining.\textsuperscript{4} Whether this relates to a lack of flexibility or supports in regional Queensland, and whether the ‘missing’ supports are personal or professional, are areas that needs further research, particularly within the context of women being lost to the profession. Also in this category, young men (aged below 30) were more likely than their older male colleagues to perceive their work as emotionally draining.\textsuperscript{5}

\begin{itemize}
\item \textsuperscript{1} Survey Q2 (age), Q3 (number of lawyers - workplace size), Q4 (postcode – split as to metropolitan or regional), Q5 (position in firm e.g. partner or employee), Q6 (background: whether professional parent, private schooling, a prior career, or undertaking current studies), Q7 (children).
\item \textsuperscript{2} Mann Whitney (MW)-U=3952.00  Z=-2.719  p=0.007.
\item \textsuperscript{3} Male: yes prior career N=9, 45.0%; no prior career N=53, 74.6%; $\chi^2=6.317$  df=1  p=0.012.
\item \textsuperscript{4} Survey participants were asked the location of their workplace (Q4). See: Chapter 2, n 65, at page 2-13, for postcode split; also Appendix 4. Female: metropolitan N=54, 72.97%; regional N=31, 93.94%; $\chi^2=6.142$  df=1  p=0.013
\item \textsuperscript{5} The survey instrument asked participants to indicate their age in one of five categories (Q2). See: Chapter 2, n 63, at page 2-13, for age groupings. There was a statistically significant outcome for age with reference to emotionally draining, for Male: younger group N=14, 93.33%; older group N=51, 68.00%; $\chi^2=3.999$  df=1  p=0.046
\end{itemize}
The survey results also suggested that women who worked within the medium and larger size firms were more likely than women in the small firms to report that their work was intellectually taxing. Without targeted research in this area, it is only possible to speculate that this may be due to the fact that high level and complex work is not so likely to be carried out in firms with ten or fewer solicitors. Moreover, in those smaller firms where there may be no (or less) accessible formal workplace supports, the factor of women’s apparent lack of confidence to tackle the more challenging work may come into play. This may also contribute to some women’s (and some men’s) experiences of work as psychologically stressful and emotionally draining. There was at least some support for speculation along these lines in the interview phase of the research. One senior woman principal in regional Queensland lamented the timidity of some women, together with a reluctance of the younger generation generally to take risks –

*The other thing is I think too women are still perhaps not confident ... of their own abilities ... There is still a reticence even on the part of women to have confidence in other women. I mean, I can remember talking about this at a women’s professional group] ... 10 to 15 years ago. It doesn’t seem to have got any better. There are not a lot of female role models in senior positions to encourage or attract ... or make women feel confident ... You’ve got to stand on your own two feet at some point ... If [women] feel confident in themselves to be able to do the work – then put yourself forward. ...
For the younger generation coming through ... there’s a great reticence to take wise and calculated risks, and perhaps this comes back to the lack of confidence. ...
We get younger practitioners who are very narrow focussed – that’s their area of law and they don’t want to move out of their comfort zone ... that’s been our experience ...
[woman – 50s - principal – regional]*

The issue of women’s self-confidence is one developed further in Chapter 6.8

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6 Survey participants were asked about the number of lawyers in their workplace (Q3). See: Chapter 2, n 64, at page 2-13, for firm size divisions. Female: 1-10 lawyers \(\% = 27.72\%\); 11-79 lawyers \(N=27, 96.43\%\); 80+ lawyers \(N=19, 95.00\%\). Due to cell sizes the difference was not statistically significant, but it is an interesting result in the context of solicitors negotiating professional stressors in a range of workplace settings.
7 If: 6, 11, 25-26
8 See: Chapter 6, Section 6.10 A Matter of Confidence, p 6-37.
| APPENDIX 10 | CHAPTER 5 – DEMOGRAPHIC FACTORS RELEVANT TO COPING STRATEGIES USED BY PRACTITIONERS |
APPENDIX 10: CHAPTER 5 – DEMOGRAPHIC FACTORS RELEVANT TO COPING STRATEGIES USED BY PRACTITIONERS

Survey Question 17 listed a number of coping strategies that might be used by solicitors to manage stress. These were: quality time with family; walk/jog/run; spend time with friends; do nothing at home; sport; alcohol/prescription drugs; healthy diet; sleep a lot; meditate; or use illegal drugs. Solicitors were also able to nominate other strategies of they wished to do so. The key data from this Question is discussed in Chapter 5.

This Appendix sets out demographic data related to some of the specific coping mechanisms nominated by solicitors.

Quality family time was the most utilised coping strategy for women and for men. Women in small (N=25, 62.5%) and medium size (N=14, 48.3%) firms were more likely than their sisters in large firms (N=6, 28.6%) to nominate quality time with family;¹ as were women from rural/regional areas (N=23, 67.6%) as opposed to women from city firms (N=33, 43.4%).² By contrast, men from the metropolitan/city firms (N=26, 55.3%) were more likely than men in regional firms (N=16, 34.0%) to list quality family time;³ as were men with children (N=33, 53.2%), compared to men who were childless (N=10, 29.4%).⁴

As I discuss in Chapter 5, a little under 30 percent of the women and of men reported using alcohol and/or prescription drugs as a ‘coping strategy’. Among the women who listed this as a coping strategy, women with a prior career (N=12, 41.4%) were much more likely to list this than were women who had only worked professionally in law (N=16, 20.3%).⁵ For men the trend was opposite to this (male: yes prior career N=3, 13.6%; no prior career N=26, 35.1%).⁶

¹ \chi^2=6.392 \text{ df}=2 \text{ p}=0.041.
² \chi^2=5.517 \text{ df}=1 \text{ p}=0.019.
³ \chi^2=4.304 \text{ df}=1 \text{ p}=0.038.
⁴ \chi^2=5.036 \text{ df}=1 \text{ p}=0.025.
⁵ \chi^2=4.930 \text{ df}=1 \text{ p}=0.026.
⁶ \chi^2=3.718 \text{ df}=1 \text{ p}=0.054.
In terms of the statistically significant differences highlighted in bold in Table 5.2, I suggest men may continue to present the greatest health risks, as significantly more women than men report using healthy dietary habits to combat stress.\(^7\) Although the older groups of men, aged 30 years and over (N=16, 19.8%), were more inclined than the men under 30 (N=0, 0.0%) to have some appreciation of this as a coping strategy.\(^8\) ($\chi^2=3.556 \ df=1 \ p=0.059$).

Women were also much more likely than their male colleagues to nominate sleep as a strategy.\(^9\) But, whether this is symptomatic of a conscious healthy lifestyle choice, or whether it links to women finding their work much more psychologically stressful and hence represents a sign of stress, exhaustion or depression, is not clear. One woman wrote poignantly on her survey document: *[I] always seem to be tired.*\(^10\)

As outlined in Chapter 5, men were more likely than women to use sport as a coping strategy. But, women were statistically far more likely to select sport if they had no children than were their female colleagues who were parents.\(^11\)

Other statistically significant differences arising out of demographic data related to the strategies of (a) spend time with friends with men in metropolitan areas were far more likely than their regional colleagues to use this strategy; as were men without children compared to fathers;\(^12\) and (b) do nothing at home which was more likely to be selected by men without children than by men who had children.\(^13\)

Women solicitors in Queensland also clearly reported they are time poor, as many of them said they were unable to use coping strategies because of the need to attend to

\(^7\) MW-U=4576.00 $Z=-2.237$ $p=0.025$.
\(^8\) $\chi^2=3.556 \ df=1 \ p=0.059$.
\(^9\) MW-U=4390.00 $Z=-3.044$ $p=0.002$. But, whether this is symptomatic of a conscious healthy lifestyle choice, or whether it links to women finding their work much more psychologically stressful and hence represents a sign of stress, exhaustion or depression, is not clear.
\(^10\) F36(S) at Q17 What do you do to cope with work pressures?
\(^11\) Female: yes children N=3, 9.1%; no children N=21, 28.0%; $\chi^2=4.741 \ df=1 \ p=0.029$. Moreover, as I have detailed in Chapter 4, sport emerged as holding a powerful and often privileged place in the culture of the private legal profession – see: Chapter 4, Section 4.9 Part of the Team, p 4-56.
\(^12\) Male: metropolitan N=22, 46.8%; regional N=12, 25.5%; $\chi^2=4.608 \ df=1 \ p=0.032$; Male: yes children N=15, 24.2%; no children N=19, 55.9%; $\chi^2=9.640 \ df=1 \ p=0.002$.
\(^13\) Male: yes children N=9, 14.5%; no children N=17, 50.0%; $\chi^2=14.000 \ df=1 \ p=0.000$. 


domestic and household chores, or simply that there was not time to spend on themselves. There were some demographic factors, other than sex, operating in the nomination of barriers to utilisation of coping strategies. Women with no prior career were significantly more likely to nominate a requirement to attend to household/domestic chores than were those women who did have a career before law.\footnote{Female: yes prior career N=6, 20.7%; no prior career N=38, 48.1%; $\chi^2=6.602$ df=1 $p=0.010$.} The need to provide childcare was a barrier for women 30 plus years, compared to younger women.\footnote{Female: younger group N=2, 4.7%; older group N=18, 26.9%; $\chi^2=8.688$ df=1 $p=0.003$.} As would be expected, this was also a clear barrier for both women and men with children, although more strongly so for mothers than for fathers.\footnote{Female: yes children N=19, 57.6%; no children N=0, 0.0%; $\chi^2=52.400$ df=1 $p=0.000$. Male: yes children N=15, 24.2%; no children N=0, 0.0%; $\chi^2=9.749$ df=1 $p=0.002$.}
APPENDIX 11
CHAPTER 5 – DEMOGRAPHIC FACTORS RELEVANT TO WORKPLACE POLICY AVAILABILITY
APPENDIX 11: CHAPTER 5 – DEMOGRAPHIC FACTORS RELEVANT TO WORKPLACE POLICY AVAILABILITY

In Chapter 5, Table 5.6 sets out details of availability and accessibility in respect of a number of workplace policies: part-time work, job sharing, paid parental leave, unpaid parental leave, flexible working hours, holidays to suit family needs, emergency leave, scope for sorting activities, and paid sick leave.

The survey findings as to workplace policy availability were also examined against various demographic data collected through the research. As Chapter 5 details, a solicitor’s sex was important in respect of two policies, unpaid parental leave and sick leave.

Other demographic factors that could come into play within either the group of men generally or within the group of women surveyed were, variously: a practitioner’s age, firm size, whether the firm was metropolitan or regional, the position held within the firm, the type of school attended, whether the practitioner had a professional parent, or a prior career, or whether they were undertaking current studies, and whether they had children.

The following Table sets out the list of workplace policies and indicates those where demographic factors are relevant. As the Table shows, all policies (except holiday scheduling to meet family needs, and emergency leave) were affected by a range of demographics when considering the issue of policy availability. The two policies where women and men recorded statistically significant differences as to policy availability are highlighted in bold type, in respect of all the other listed policies women and men’s responses were broadly similar in statistical terms, but differences arose within groups of men (e.g. by reference to their firm location, the position held in a firm, whether or not they had a professional parent, and whether or not they had children); and within groups of women (e.g. by reference to age, firm size, firm location, whether they had a professional parent, whether or not they had a prior
career, whether they were undertaking current studies, and whether or not they had children).

**Appendix 9 Table 1: Demographic factors that influence policy availability**

<table>
<thead>
<tr>
<th>Policy</th>
<th>Age</th>
<th>Size</th>
<th>Location</th>
<th>Position</th>
<th>Parent</th>
<th>School</th>
<th>Career</th>
<th>Studies</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q11 policy</td>
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<td></td>
<td></td>
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<tr>
<td>PART TIME WORK</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>JOB SHARING</td>
<td>F3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>JOBSHARING &amp; F3</td>
<td>M3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PAID PARENT LEAVE</td>
<td>M3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UNPAID PARENT LEAVE</td>
<td>M3</td>
<td>M3</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>FLEXIBLE HOURS</td>
<td>F3</td>
<td></td>
<td></td>
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<tr>
<td>HOLIDAYS TO SUIT FAMILY</td>
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<tr>
<td>EMERGENCY LEAVE</td>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>SCOPE SPORT ACTIVITIES</td>
<td>F3</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PAID SICK LEAVE</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>M3</td>
</tr>
</tbody>
</table>

For **part-time work**, men with a professional parent were significantly more likely to record the availability of this policy than were men without a professional parent.¹

With regards to a **job sharing policy**, men were significantly more likely to report this policy existed in their workplace if they had children, than were men who were childless.² For women the availability of the policy was significantly more likely for those who were not undertaking current studies compared to those women who were;³

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¹ Male: yes professional parent N=27, 79.41%; no professional parent N=34, 56.67%; χ²=4.928 df=1 p=0.021
² Male: yes children N=28, 45.90%; no children N=8, 24.24%; χ²=4.251 df=1 p=0.031
³ Female: yes current studies N=2, 11.76%; no current studies N=31, 36.90%; χ²=4.062 df=1 p=0.036
for women who did not have a professional parent compared to women who did;\textsuperscript{4} and for women who worked in the small and medium size firms as opposed to women who were working inside the large firms.\textsuperscript{5}

Significant difference existed for participating men around the paid parental leave policy depending on whether the surveyed men were located in metropolitan or regional firms – with men in metropolitan firms significantly more likely to report that availability of paid parental leave than were their male colleagues in regional areas.\textsuperscript{6}

In respect of unpaid parental leave, this was more likely to be listed as available by women generally as opposed to men. However, men in the metropolitan firms were statistically significantly more likely to record the availability of unpaid parental leave than were men in regional firm locations\textsuperscript{7} (indicating perhaps that the centrally located city firms generally have more capacity to establish this policy; and/or are perhaps more aware of the extent of policies on offer in other government/private sector businesses who may be directly competing for legal professional staff). Further, men who were employed solicitors/other designations (as opposed to male partners/principals) were more likely to say unpaid parental leave was available in their workplace.\textsuperscript{8}

In respect of flexible working hours, women aged 30 years and over were far more likely to report this policy was available than were their younger female colleagues.\textsuperscript{9} Also, women who had had a prior career recorded a higher availability of flexible hours than did those women who had not had a prior career before entering the legal profession.\textsuperscript{10} Women with children were also statistically significantly more likely to

\begin{itemize}
  \item \textsuperscript{4} Female: yes professional parent N=11, 20.75\%; no professional parent N=24, 45.28\%; $\chi^2$=7.209 df=1 p=0.006
  \item \textsuperscript{5} Female: 1-10 lawyers N=19, 50.00\%; 11-79 lawyers N=6, 21.43\%; 80+ lawyers N=6, 30.00\%; $\chi^2$=6.122 df=2 p=0.047
  \item \textsuperscript{6} Male: metropolitan area N=16, 38.10\%; regional area N=6, 13.64\%; $\chi^2$=6.753 df=1 p=0.009
  \item \textsuperscript{7} Male: metropolitan area N=28, 68.29\%; regional area N=20, 45.45\%; $\chi^2$=4.503 df=1 p=0.028
  \item \textsuperscript{8} Male: partner/principal N=22, 44.00\%; employed solicitor/other N=26, 72.22\%; $\chi^2$=6.760 df=1 p=0.006
  \item \textsuperscript{9} Female: younger group (20-29) N=16, 38.10\%; older group (30+) N=37, 59.68\%; $\chi^2$=4.667 df=1 p=0.025
  \item \textsuperscript{10} Female: yes prior career N=17, 70.83\%; no prior career N=35, 44.87\%; $\chi^2$=4.950 df=1 p=0.022
\end{itemize}
indicate the existence of a flexible working hours’ policy than were their childless sisters-in-law;\textsuperscript{11} as were women not undertaking current studies compared with those who were.\textsuperscript{12} Whether some at least of these women had an added maturity by virtue of age and professional and life experiences, which made them more able to negotiate flexibility within their firms; whether their prior experiences led some to select more flexible employers; and/or whether other factors are operating, is not clear.

In reporting on scope to regularly participate in some \textit{sporting activity} (for example, golf, gym, touch football), slightly more women than men overall perceived this availability, with nearly two-thirds (63.50 percent) of all the respondents recording policy availability. For women, practising law in the city, as opposed to in a rural/regional area, made it significantly more likely that women would report this policy/practice existed.\textsuperscript{13} (It is not clear whether practitioners were reporting the existence of a policy they saw as available equally to all women and men in a specific workplace including themselves, or whether they have simply observed others/other groups in the firm enjoy access to such a policy.)

As to any demographic impacts on \textit{paid sick leave} within the groups of both women and men, holding the position of partner/principal in the legal practice meant it was less likely a survey respondent would record the availability of this form of leave - and for men this was significantly so in statistical terms.\textsuperscript{14} I suggest that this, in turn, reflects the driving need perceived by senior practitioners to be available to look after the business – and hence the clients – regardless of their own health needs.

\textsuperscript{11} Female: yes children N=21, 67.7%; no children N=30, 42.3%; $\chi^2=5.607$ df=1 $p=0.018$

\textsuperscript{12} Female: yes current study N=3, 17.65%; no current study N=47, 57.32%; $\chi^2=8.865$ df=1 $p=0.003$

\textsuperscript{13} Female: metropolitan N=54, 73.97%; regional N=15, 45.45%; $\chi^2=8.135$ df=1 $p=0.005$

\textsuperscript{14} Male: partner/principal N=38, 71.70%; employed solicitor/other N=38, 92.68%; $\chi^2=6.575$ df=1 $p=0.026$; Female: partner/principal N=21, 84.00%; employed solicitor/other N=80, 97.56% (the cell sizes for women were too small to categorise the differences for women as significant).
<p>| APPENDIX 12 | CHAPTER 5 – SOLICITORS’ VIEWS ON FLEXIBILITY IN SPECIFIC PRACTICE AREAS |</p>
<table>
<thead>
<tr>
<th>SPECIFIC AREA</th>
<th>YES - FLEXIBILITY POSSIBLE</th>
<th>NO – FLEXIBILITY NOT POSSIBLE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CONVEYANCING</td>
<td>* We actually have a job share arrangement in the conveyancing side … because there’s a pretty pat routine [I(f)52: 17-18, principal general practice]</td>
<td>* Conveyancing and leasing … you can’t do that part time – where time is of the essence [I(f)46: 24-26, specialist lawyer (non- conveyancer)]</td>
<td></td>
</tr>
</tbody>
</table>
| LITIGATION – GENERAL - COMMERCIAL | * You can take on matters [in] ‘internal’ referrals, there’s little client contact; ‘external’ litigation is also possible – probably it’s hard at the trial itself, but I know a partner [another firm] who always takes one weekday off and has been a successful litigation partner for years [I(m)78: 15-16, senior partner national firm]  
* It could certainly work – where a matter goes for two years you tend to work in a team … There is just no reason why someone couldn’t be doing what needs to be done for 3 days and another person comes in for 2 – it might take them 20 minutes to look at what happened [on the file] – it’s all there in the electronic files – you can even update yourself at home as to what’s going on, so that the minute you’re in the office you can launch straight into where it’s at [I(f)37: 19-20, senior litigator]  
* The suggestion part time work is not possible is ridiculous – you might have to have flexibility enough to change your days … it’s not a big problem [I(f)38: 20-21, litigator]  
* When you’ve got sitting weeks, you could potentially have some issues … [but] most litigation files are in developmental work for about 80 percent of their lifespan. [I(f)34: 25-26, commercial lawyer] | * [Flexibility] doesn’t apply to your general litigation [or] commercial litigation [I(f)52: 17-18, non-litigator]  
* We would encourage part time as long as the work can accommodate it – and that’s the biggest problem – particularly with litigation – the work doesn’t accommodate someone coming and working 2 ½ days – [perhaps] you could accommodate someone working 5 days half time because there’s someone there each day. [I(m)41: 7-8, insolvency lawyer]  
* It would be hard to be a part time litigation lawyer [I(f)70: 13, corporate] |  |
| WILLS, ESTATES, PROBATE | * There’s standard procedures you could do there [I(f)52: 17-18, principal general practice]  
* Okay for part timers … for someone who wasn’t really giving it full time [I(m)78: 15-16, senior partner national firm]  
* Some flexibility may be possible. [I(m)79: 6, senior family lawyer]  
* The technology should make it [even] easier to work from home … it’s probably not happening as quickly as we’d like [I(f)32: 15, part time estate lawyer]  
* Some have done part time well [in] estate work [I(f)70: 13, corporate] | |
<table>
<thead>
<tr>
<th><strong>BANKING AND FINANCE</strong></th>
<th>* An area where [flexibility] works very easily is banking and finance and I have got part time female partners in there … because the work is largely repetitive [I(m)78: 15, senior partner national firm]</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROPERTY</td>
<td>* Transaction based has a beginning and an end … there is a relationship established with clients [and] a potential for a high repeat rate typically every 2 to 3 years … so if you establish a good stable of clients I think it could be made compatible with part time – but not the traditional 3 day a week sense [I(m)41:4-5, commercial property lawyer]</td>
</tr>
<tr>
<td>INSURANCE</td>
<td>* May also be okay part time [I(m)78: 15-16, senior partner national firm]</td>
</tr>
<tr>
<td>CORPORATE COMMERCIAL</td>
<td>* No - unless we find some discrete areas of practice [within the broader area of law] – regulatory work, writing patent documents – far less immediate cutting edge work [I(m)78: 15-16, senior partner national firm]</td>
</tr>
<tr>
<td>FAMILY LAW</td>
<td>* I have found family law firms, especially this firm, to be very accommodating … people feel so loyal to the organisation that offers them flexibility. [I(m)30: 17, specialist family lawyer]</td>
</tr>
</tbody>
</table>

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* People in finance just might have this massive transaction that lasts for a week and they work 24 hours a day – I can see job sharing might not work there [I(f)37: 19, senior litigator] |
* We’re pretty obsessive compulsive because we dot ‘i’ s and cross ‘t’s for a living – you just don’t want to let someone else take it over … and I don’t think [the firm] necessarily handles those transitions very well. [I(f)44: 4-5, commercial lawyer] |
* Most commercial lawyers will tell you their clients expect them to be there all the time, [I(f)71: 8, now government sector] |
* The hardest one really is commercial – corporate and commercial – you tend to act for the same clients – they’ve got instant needs. Their crises come and they want someone to spend 24 hours, 5 days in a row, and it’s very difficult to be there at the cutting edge and be just a part timer. … you’ll be out of touch [I(m)78: 16-17, senior partner national firm] |
* I often thought about how I could better delegate and the reality unfortunately is that the client demanded me … I found it impossible to have any flexibility in my time. [I(m)79: 6, senior family lawyer] |
| APPENDIX 13 | CHAPTER 5 – WORK PRACTICES TO PROMOTE WORK LIFE BALANCE FOR SOLICITORS |
A: I’ve hired young people who are coming through and have got the right level of skills for my business unit. But I’m … pushing them a lot my preferred work model, which is, “I want my pound of flesh out of you. I want a reasonably full day. But if you’re still here too much after 6, I want to know why. I’m happy for you to do that occasionally, almost as an exception” … And it’s not just about children if they’ve got family. It’s about life out of this place. I don’t want them working weekends. The business model that the law is increasingly been built on is a leveraged group, with lawyers billing recoverable time, and I know that on that model I can make good money out of my business unit.

So I say to my troops, “I don’t want to really demand of you too much more than that. Unless the work is there [and] to do it you have to work longer hours. And if it starts to become a constant, I’ll hire another lawyer so that I can get your hours back down to the business model that drives the profitability that I want, but at not too great an expense to you”.

Because I fear that they will leave me and also that they will be dissatisfied with their experience in the law …

Q: In some places where I’m hearing they’re … there at 6 in the morning, they’re there at 10 at night, they’re boasting about sending emails at 3 am?

A: Oh, no, there’s a big element of that I know. I’ve got a young lad who does those silly sort of hours, and I try and discourage him. I think he’ll do it no matter how many lawyers I hire and how many resources I put at his disposal.

Q: But he’s responding to competition outside, coming from others?

A: Yes, very much so. And I’ve told him … I’ve actually done something. There’s a facility in [our software system] for a delayed send on an email, and I’ve said to him, “I don’t want any emails being sent to clients or other lawyers between 10 pm and 7 am”. I’ve said, “I think it sends the wrong message”. I said, “I don’t want our clients getting an email from you at 11 pm or 3 am”. And that has happened. And I said to him, “So you stop it. You do them as drafts, and if need be you come in the morning at 7 o’clock and you send it”.

But I don’t want him sending a message to our clients … whoever we’re writing to, that we’re doing those sort of hours. I actually want to stop the hours. But in the meantime if I can’t stop him working the hours, I want him to stop sending the message that we are here, because people’s expectations then become, “I can rely on him being there [at those hours]”.

And my hope would be that the follow on from that is he actually cuts back on his hours and he wants to put some real time into what I think is quality of life – what he’s doing here for me is not quality of life.

Q: It’s very interesting isn’t it, that culture’s still out there, even where there are individual workplaces, or groups within workplaces, that are consciously trying to stop it?
A: Yes. But I have another group of young lawyers who work with him and for him and for me, who roll their eyes at that sort of behaviour and who actively do not aspire to it. And I actively discourage it as a model to aspire to.

Q: It’s almost self fuelling?

A: It is. And he likes our clients to know that he’s there at that sort of hour ... That’s why I actually told him to stop sending the emails between those hours because I want to actually try and dampen down the behaviour.

And later in the interview, he returned to this theme –

Q: Because if your clients regularly get the 3 am emails, you’re saying to them, “anytime ...”?

A: Yes. One of my partners has in his standard capability statement that our partners and lawyers are available on a 24 hour, 7 day a week basis. And every time I put out a capability statement I cross it out. I just don’t even mention it, because I figure the day you tell people about it is the day they’ll start thinking, “Oh well, I’m thinking about it, so [I’ll phone my lawyer].”

[man – 40s – partner – metropolitan] (emphases his)
| APPENDIX 14 | CHAPTER 6 – DEMOGRAPHIC FACTORS RELEVANT TO SUCCESS CHARACTERISTICS |
As outlined in Chapter 6, solicitors were asked in Survey Question 21 to rank characteristics best defining success for them. The rankings of all listed success characteristics are set out in Table 6.2 in Chapter 6, with the most highly ranked characteristics summarised in Graph 6.1. These key characteristics were then considered against demographic data collected in the survey. I have summarised in the following Table those demographics that could affect the likelihood of a specific characteristic being ranked by survey participants.

**Appendix 14 Table 1: Demographic factors that influence Q21 characteristics for females and males.**

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>age</th>
<th>size</th>
<th>location</th>
<th>position</th>
<th>parent</th>
<th>school</th>
<th>career</th>
<th>studies</th>
<th>children</th>
</tr>
</thead>
<tbody>
<tr>
<td>RESPECTED</td>
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<td></td>
<td>M ✓</td>
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</tr>
<tr>
<td>HONEST</td>
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<td>✓</td>
<td></td>
<td>F ✓</td>
<td>F ✓</td>
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<td></td>
<td></td>
<td>M ✓</td>
</tr>
<tr>
<td>ETHICAL</td>
<td>M ✓</td>
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<td>M ✓</td>
<td>F ✓</td>
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<td></td>
</tr>
<tr>
<td>HEALTHY &amp; HAPPY</td>
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<td></td>
<td>F ✓</td>
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<td>ACHIEVING GOALS</td>
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As Chapter 6 discusses, there is a broadly shared view among solicitors, regardless of sex, as to the group of characteristics that best define success. It is also apparent that women and men are influenced by a range of personal demographic factors, although no particular demographic made it more likely that women and men would rank a particular characteristic in their ‘top five’. However, I suggest the relevant demographic data does conjure the image of a traditional ‘benchmark man’, who matures with age and the eventual responsibility for children; and, in some instances
at least, recognises an ongoing importance of his schooling in his adult professional world.¹

Each of the highly ranked success characteristics was then examined in terms of demographic data. Each characteristic was also considered within the context of the interviews conducted as part of the project.

**Respected by Others** – men who reported in the survey that they had not received private schooling were significantly more likely to rank this characteristic of respect by peers, clients and the public in their ‘top five’ attributes of success, than were their male colleagues who had attended such schools for at least part, if not all, of their secondary education.² It is interesting to speculate whether this is but one facet of a phenomenon that some participating solicitors identified as an *in group*, or *ruling group*, within the profession. In such groups, for men who have enjoyed a private education and the contacts and links that that can provide and foster throughout a professional life, respect may be subsumed into a sense of entitlement and privilege and does not need to be singled out for comment. This was one male solicitor’s considered view -

> I had the opportunity for a certain detachment in that I wasn’t part of that system … I didn’t have the mores associated with it – and, indeed, I wish I had a dollar for the number of times people asked me if I’d been to Churchie, if I’d come from Churchie school ... in that I obviously ‘fit’ the category of person who they believed was one of the next generation of the lads ...

[man – 30s – solicitor – metropolitan now regional]³

This was not a fanciful, or isolated view, as this interview excerpt reveals –

> My entrée into the law I guess was really through the sort of connections that I had from playing football and things like that, you know ... and the school I went to – I mean ... when you were applying for a job originally, they were the things that got your foot in the front door I suppose ... And even today I think that still does apply – very much.

[man – 40s – held leadership roles in profession]⁴

¹ For a clever juxtaposition of how certain attributes (including having a family, being hard working, networking, etc) are interpreted differently for men and women, see: Josefowitz, Natasha, *The Office* reprinted in Powell, Gary N (ed), *Women and Men in Management* (2nd ed 1993), 101-102; see also Thornton, Margaret, *Dissonance and Distrust – Women in the Legal Profession* (1996).

² Male: yes private school N=45, 69.23%; no private school N=25, 89.29% \( \chi^2= 4.228 \ df=1 \ p=0.040 \)

³ I(m)41: 31 (Churchie is a reference to a prestigious private boys’ school, Brisbane Church of England Grammar School)

⁴ I(m)75: 3
And many women are acutely aware of this dynamic, as typified by this comment –

> They are members of the Rugby Club and Tattersall’s and they, you know, they actually all still know and give a damn about who won the high school rugby, for God’s sake. They all still talk about and care about what school they went to.

[woman – 30s – describing [male] partners in her firm]^{5}

Some interviewees, women and men, spoke of a ‘born to rule’ attitude that excluded those who came from the ‘wrong’ schools or backgrounds. One woman described it this way -

> We used to joke that there was a class for male lawyers at university in arrogance that female lawyers just didn’t know about …

[woman – 30s – sole principal – rural]^{6}

**Honest** – whether or not a solicitor gave this characteristic a high ranking could be affected by the firm size, whether or not a research participant had a professional parent, and whether or not they had children. The greater the number of lawyers in their firm, the less likely women were to rate honesty as a ‘top five’ indicator compared to other women in smaller firms.^{7} Also, women were less likely to rank honesty high where they had at least one professional parent as opposed to women who did not have a professional parent/s.^{8} Men gave this characteristic more weight when they had children, compared to their childless male colleagues.^{9}

One woman espoused these clear values for her firm –

> For a fair fee, we offer a variety of solutions and straightforward advice … We are honest in all our dealings.

[woman – 50s – sole principal – regional]^{10}

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^{5} I(073: 3 (Tattersall’s Club in Brisbane is an exclusive men only club despite various high profile attempts (from within) to open the membership to women. See, for example: Emerson, Scott, ‘Tradition caves in to hard reality’, The Courier-Mail (Brisbane), 4 December 2001 5; Page, Graeme, ‘Let women on to our turf’, The Courier-Mail (Brisbane), 5 February 2003, 15; King, Madonna, ‘Skirting the issue’, The Courier-Mail (Brisbane), 9 March 2004, 15; King, Madonna, ‘Barrier manned but women will storm it’, The Courier-Mail (Brisbane), 8 February 2005, 19; Booth, Susan, ‘Open the doors by force’, The Courier-Mail (Brisbane), 24 March 2005, 33; O’Connor, Mike, ‘Cavemen’s club’, The Courier-Mail (Brisbane), 22 December, 2006, 31; ‘Tatt’s life: hardliner at the helm’, The Courier-Mail (Brisbane), 17-18 March 2007, 39.

^{6} I(043: 24

^{7} Firm size was divided for convenience into three groups: firms with 1-10 lawyers; with 11-79 lawyers; and with 80+ lawyers. Female: 1-10 lawyers N=32, 82.05%; 11-79 lawyers N=17, 58.62%; 80+ lawyers N=8, 40.00%; χ²=10.963 df=2 p=0.004

^{8} Female: yes professional parent N=27, 49.09%; no professional parent N=38, 71.70%; χ²=5.757 df=1 p=0.016

^{9} Male: yes children N=44, 73.33%; no children N=17, 51.52%; χ²=4.491 df=1 p=0.034

^{10} I(39: 30
One (male) solicitor, who rejected his experiences of large city firms for a smaller boutique practice, recounted his observations of the billable hours pressure – pressure, he believed, that led in some instances to ‘cheating’ behaviours and a culture of dishonesty within larger firms –

You hear stories … Where you don’t meet your billable hours … you’ve got someone yelling at you [asking] why? … The result is that people become deceitful. The reality is that you can only charge for so much of the work you do [and] well, people cheat. One partner in a big firm was saying: “if you go fishing at the weekend and you start thinking about … a certain file … you write that down on Monday morning”.

And another firm, they would go out and have quite a few drinks at lunchtime and come back to the office and say: “well, we talked about that file and we’ll write that down” … It’s a question of how ruthless you want to be …

[man – 30s – refused partnership in firm with ‘inappropriate’ culture]

Strict Ethical Standards – the ranking of this characteristic was affected significantly for some participants by their age, position, and schooling. For men, being older, or being a partner or principal in the firm were two factors that made it more likely they would rate strict ethical standards more highly than other younger or employee male participants. Whether or not they had children was not a statistically significant factor for men, but it was certainly an influential factor for them. One male partner (and parent) spoke passionately about his commitment to high standards of behaviour and his expectations that the solicitors within his business unit would abide by those standards in their practice of the law. For women, the fact they had not attended a private school made a significant difference to the likelihood they would give this characteristic a high rating (compared to other women in the sample who had attended such a school) and is typified by this comment -

We’re supposed to uphold the law. If we can’t, there’s something damn wrong.
[woman – 30s – sole principal – rural]

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11 I(m)30: 25-26
12 The survey instrument asked participants to indicate their age in one of five categories from 20-29 through to 60+. For analysis, these categories were combined into two levels (20-29 and 30+). There was a statistically significant outcome for age with reference to the characteristic of strict ethical standards. Male: younger group N=2, 15.38%; older group N=47, 58.75%; $\chi^2=8.436$ df=1 p=0.004
13 Male: partner/principal N=33, 62.26%; employed solicitor/other N=16, 40.00%; $\chi^2=4.533$ df=1 p=0.033
14 Male: yes children N=36, 60.00%; no children N=13, 39.39%; $\chi^2=3.627$ df=1 p=0.057
15 I(f)36
16 Female: yes private school N=22, 35.48%; no private school N=29, 64.44%; $\chi^2=8.767$ df=1 p=0.003
17 I(f)43: 27
A large number of women and men lamented the loss of public regard that has afflicted the profession in more recent years. Practitioners were particularly concerned by the fact that lawyers as a profession were seen in some quarters as unethical.\(^\text{18}\) One woman summed up the regret that many practitioners clearly felt –

\[ I \text{ think it’s sad that solicitors are not looked on very well because I think there’s a lot of solicitors do a lot of good work …} \]

[woman – 50s – senior litigator - metropolitan]\(^\text{19}\)

However, many solicitors also voiced their own concerns at a perceived decline in ethical standards within their profession. One former partner (with children) who had made major lifestyle changes observed that there was sometimes a contest between the ‘older’ ethical ways of operating and the new business/profit imperative –

\[ [\text{When I started] it was about the ethical rules – the rules of respect. Then it became … it developed more into a bottom line business … A lot of [firms] are struggling with that sort of … ethical, moral type dilemmas. But I think the business side of things is winning over.} \]

[man – 40s – now employed solicitor – former partner - regional]\(^\text{20}\)

**Healthy, happy lifestyle** – Where women had not had a prior career before coming to law, they were significantly more likely to rank this item highly\(^\text{21}\) than were other women who participated in the survey.

\[ I \text{ wanted to have a life – I wanted to be able to walk my dog … I wanted to be able to play with my child. So I structured my life and my practice as a family friendly practice … [Some would say] I’ve sacrificed profitability and money, but I feel that I’ve had a full and rounded life …} \]

[woman – 50s – principal – left city legal practice for regional lifestyle]\(^\text{22}\)

Generally, those lawyers who enjoyed a workplace ethic that called on extended hours as a response to urgent or major project demands rather than as a standard and expected practice, reported much happier professional and life experiences –

\(^\text{18}\) This was typified in Queensland by media coverage from 2002 of a high profile case involving solicitor Michael Baker. See, for example: Thomas, Hedley, ‘Charge! Law of the jungle’, *The Courier-Mail* (Brisbane), 10 August, 2002, 29; Thomas, Hedley, ‘Push to ‘weed out’ deceitful lawyers’, *The Courier-Mail* (Brisbane), 12 August, 2002, 1; Solomon, David, ‘Reining in the lawyers’, *The Courier-Mail*, 14 November, 2002, 15. Ultimately this was to lead to a fundamental change in the regulation of solicitors in Queensland – changes heralded in such stories as: Griffith, Chris, ‘Pledge to protect clients in legal practice changes’, *The Courier-Mail* (Brisbane), 14 July, 2003, 2.

\(^\text{19}\) I(f)38: 26
\(^\text{20}\) I(m)42: 21
\(^\text{21}\) Female: yes prior career N=11, 37.93%; no prior career N=49, 63.64%; \(\chi^2=5.667 \text{ df}=1 \text{ p}=0.017\)
\(^\text{22}\) I(f)39: 3
None of us in this firm works long hours ... Unless I have had a trial on that was starting Monday, I’ve never worked over a weekend, or never worked ... long into the night ... The profession doesn’t need to operate like that ...
[woman – 40s – former partner – now consultant]²³

**Hard working** – age, private schooling and children had the potential to affect how survey participants viewed the importance of this characteristic. Older men,²⁴ men who had not attended a private school,²⁵ and men who had children²⁶ were significantly more likely to rank hard work in their ‘top five’ characteristics of success (compared respectively to younger men, men who had not attended private school, and childless men). This was the seventh most popular item for women to list in their top five success characteristics. The fact women may have had a prior career²⁷ was not statistically significant, but it was influential in determining whether it was more likely that this attribute would be of importance to these women in comparison to their female colleagues. Hard work for many extends well beyond the paid work and the hours needed to meet client demands. One regional solicitor commented –

*You very rarely see the media do a report ... on how much free legal work we actually do – because every community organisation that comes through the door, I do it for free ...*
[woman – 30s – principal – rural – prior career]²⁸

Many men in particular described grindingly long hours and years of unrelenting effort in their working lives –

*I appreciate more now ... the respect, or the perceived respect, that you get as being competent at what you do – and having been doing it for 30 years ... To me life was: ... get the best job that you can – get it and stick at it ... If you’re busy you [just] work longer ... My partner I don’t think has had more than a week off since he was admitted ... [We] can normally get up to about ten days at Christmas ... The best I can do is to get a week or two weeks [annual holidays]*
[man – 50s – partner – regional]²⁹

_As a senior practitioner ... I was working longer hours than I’d ever worked in my life – and was required to continue to increase those hours ... I_

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²³ I(f)48:3-4
²⁴ Male: younger group N=1, 7.69%; older group N=36, 45.00%; $\chi^2=6.497$ df=1 p=0.011
²⁵ Male: yes private school N=21, 32.31%; no private school N=16, 57.14%; $\chi^2=5.038$ df=1 p=0.025
²⁶ Male: yes children N=29, 48.33%; no children N=8, 24.24%; $\chi^2=5.518$ df=1 p=0.023
²⁷ Female: yes prior career N=16, 55.17%; no prior career N=27, 35.06%; $\chi^2=3.533$ df=1 p=0.060
²⁸ I(f)43: 22
²⁹ I(m)47: 1, 3, 20-21
remember I got to November last year and realised I’d only had one week holiday in the whole year and the year was nearly over
[man – 50s – former partner and high profile practitioner]

I have a good friend ... [He] works phenomenally long hours ... He’s got his own law firm. He’s got very good lawyers working for him ... He is regarded as one of the leading ... lawyers and he’s in his office most days at 5.30 in the morning. He works through to 6 or 7 at night most days [and] every second weekend he works the full weekend. He has to do that just to keep up with the workload that he has ...
[senior lawyer: describing colleague] (emphasis his)

Achieves personal goals – this was the characteristic that was the fifth most popular selection in the rankings for women, and sixth most popular for men. Men were more likely to rank it high (compared to other men) if they did not have children. Women were more likely to rank it high, in comparison to other women, if they were younger. This woman had been very clear about the importance of her goals since she had commenced in the profession –

My success I guess is ... one is that I’ve got that life balance ... secondly is if there’s sufficient money coming in to meet the bills and go on holidays and things – holidays rate very highly with me ...
[woman – 40s – employed solicitor – regional]

If success is a measure of how we meet our goals, and how we build on and use our past life experiences, then it is not surprising that both women and men will place greater store on different attributes and have different interests and commitments at different stages in their career and life cycles, as these typical quotes illustrate -

I was very idealistic ... Clearly though as you get older success is looked at from several other aspects ... The obvious one is financial ... Trying to do some good is still an aspect that’s very important to me ... But as you become more senior ... other issues, other demands come upon you, particularly with a family there are the aspects of financial success. And then, of course, success as judged by your peers
[man – 50s – former partner – high profile in profession]

... Your networking changes in your life periods – because when you’re young, or if you’re a couple, sport is a major thing ... But early 30s to early

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30 (m)79: 16
31 (m)79: 19
32 Male: yes children N=16, 26.67%; no children N=17, 51.52%; χ²=5.742 df=1 p=0.017
33 Female: younger group N=26, 61.90%; older group N=25, 37.88%; χ²=5.945 df=1 p=0.015
34 (f)53: 1
35 (m)79: 1
40s family’s big … you know, there’s kids along the line … So children and family time go up – and the network modifies or changes …

[man – 30s – partner - metropolitan]36

... I ... still feel the family comes before the workplace ... I personally wasn’t prepared to do some of the things that were required early on – I wasn’t ever prepared to work 12 hour days – and weekends – and that sort of thing – to achieve success – I achieved it without doing those things.

[woman – 40s – former partner - now consultant – metropolitan]37
APPENDIX 15

CHAPTER 6 – DEMOGRAPHIC FACTORS RELEVANT TO ‘GOOD LAWYER’ ATTRIBUTES
APPENDIX 15: CHAPTER 6 – DEMOGRAPHIC FACTORS RELEVANT TO ‘GOOD LAWYER’ ATTRIBUTES

Research participants were asked in survey Question 19 to rank those attributes they considered important for recognition (by peers, clients, public) as a ‘good lawyer’. The full list of attributes, and solicitors’ rankings of them are set out in Chapter 6, in Table 6.4.

There were two attributes where there was a statistically significant difference between women and men, and only one of these was ranked in participants’ ‘top ten’. Women were much more likely to give a high ranking to logical thought and clear expression\(^1\) than were their male colleagues. This attribute was the third most popular to be ranked in the women’s top five, but it was only the eighth most popular to be ranked in the top five by the men who responded to the survey. There was also a statistically significant difference between women and men in their ranking of the attribute enthusiastic\(^2\). This was not ranked highly by practitioners generally, but men were more likely than women to see it as important.

As in other parts of the survey, some demographic factors did come into play in respect of how participants were likely to value and rank key attributes. Strong communication skills was rated more highly by women who had either a professional mother or a professional father than it was by women who had no professional parent.\(^3\) By contrast, common sense was more likely to be ranked high by women who had no professional parent.\(^4\) Also women who were not undertaking current studies\(^5\) saw common sense as a more important attribute than did women who fell outside this demographic.

\(^1\) \(\chi^2=5.075\) df=1 \(p=0.024\)
\(^2\) Some 5% of women noted this attribute in their top five, compared to 16% of men. \(\chi^2=7.063\) df=1 \(p=0.008\)
\(^3\) Female: yes professional parent N=41, 75.93%; no professional parent N=28, 50.91%; \(\chi^2=7.341\) df=1 \(p=0.007\)
\(^4\) Female: yes professional parent N=23, 42.59%; no professional parent N=37, 67.27%; \(\chi^2=6.701\) df=1 \(p=0.010\)
\(^5\) Female: yes current study N=5, 29.41%; no current study parent N=53 60.92%; \(\chi^2=5.723\) df=1 \(p=0.017\)
Being **practical and adaptable** was significantly more likely to receive a high ranking by men over 30 years of age;\(^6\) by men who had not attended a private school;\(^7\) and/or by men who had a prior career\(^8\) than it was by their younger male colleagues, by male colleagues who went to a private school, and/or men who had only ever worked inside the legal profession.

Men over 30 years of age were far more likely than the younger men in the sample to see **high ethical standards** as significant\(^9\) in their ranking of these attributes.

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\(^6\) Male: younger group N=2, 13.33%; older group N=36, 44.44%; \(\chi^2=5.122\) df=1 \(p=0.024\)

\(^7\) Male: yes private school N=22, 32.35%; no private school N=16, 57.14%; \(\chi^2=5.097\) df=1 \(p=0.024\)

\(^8\) Male: yes prior career N=13, 59.09%; no prior career N=25, 33.78%; \(\chi^2=4.542\) df=1 \(p=0.033\)

\(^9\) Male: younger group N=2, 13.33%; older group N=44, 54.32%; \(\chi^2=8.520\) df=1 \(p=0.004\)
| APPENDIX 16 | CHAPTER 6 – DEMOGRAPHIC FACTORS RELEVANT TO REASONS TO REMAIN A LAWYER |
APPENDIX 16: CHAPTER 6 – DEMOGRAPHIC FACTORS RELEVANT TO REASONS TO REMAIN A LAWYER

Chapter 6 sets out fully the various reasons women and men continue to work as lawyers. These reasons are tabulated in the Chapter at Table 6.5, with the most highly ranked reasons depicted in Graph 6.3. Some particular reasons were influenced by demographic factors for women or for men, and these are examined briefly here.

In respect of **personal satisfaction** – this was more likely to be ranked as a reason to remain in the profession by men who did not have a professional mother or father than by the men in the sample who did not have a professional parent.¹ Personal satisfaction was also more likely to be ranked high by women who were over 30 years of age than by younger women,² and by women who had children (in contrast to their childless sisters-in-law).³

Men practising in a metropolitan setting were significantly more likely than men in rural areas to see their work as **intellectually invigorating** and hence a reason for continuing as a solicitor.⁴ (Women did not show any differences by geographic location on any of the reasons listed for consideration.)

As to whether remaining in the profession was seen as an **opportunity to meet a range of people** (in the profession, as clients, or in the general public), women without children were more likely to view this as significant than were women who did have children.⁵ For men, those located in a metropolitan area were significantly more likely to see this as a reason to remain a lawyer, than were their male rural

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¹ Male: yes professional parent N=12, 38.71%; no professional parent N=42, 68.85%; χ²=7.703 df=1 p=0.006
² Female: younger group N=19, 45.24%; older group N=41, 66.13%; χ²=4.477 df=1 p=0.034
³ Female: yes children N=24, 72.73%; no children N=35, 50.72%; χ²=4.432 df=1 p=0.035
⁴ Survey participants were asked the postcode of their workplace (Q4). To analyse metropolitan as against regional responses, postcodes were grouped in accordance with a report (Metropolitan and Country Post Code Ranges) from Australia Post Customer Service used by a Griffith University Research Fellow since 1999. Hence postcodes 4000 to 4029 were classed as Brisbane Metropolitan, and 4210 to 4999 were classed as Queensland Country. Male: metropolitan N=22, 48.89%; regional N=11, 24.44%; χ²=5.789 df=1 p=0.016
⁵ Female: yes children N=20, 60.61%; no children N=20, 28.99%; χ²=9.364 df=1 p=0.002
colleagues. In terms of whether their work was exciting/challenging/never boring, again metropolitan men, as opposed to their rural counterparts, were significantly more likely to count this as a reason for remaining within the profession.

For solicitors who said they would change their profession, but that they had no alternatives to go to, women with children were significantly less likely than other women to rank this as important. For those who felt debt/finances did not permit a change, men who were partners or principals in the profession were significantly more likely to cite this as a reason than their male employed colleagues.

The response to the possibility that the profession afforded flexibility to be involved in other things was noteworthy. Very few women (with or without children), or men, considered this to be a sufficient (or existing) factor to encourage them to remain in the profession.

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6 Male: metropolitan N=19, 42.22%; regional N=10, 22.22%; χ²=4.121 df=1 p=0.042
7 Male: metropolitan N=16, 35.56%; regional N=6, 13.33%; χ²=6.016 df=1 p=0.014
8 Female: yes children N=5, 15.15%; no children N=29, 42.03%; χ²=7.257 df=1 p=0.015
9 Male: partner/principal N=19, 37.25%; employed solicitor/other N=6, 14.63%; χ²=5.877 df=1 p=0.013
10 F with children N=9; F without children N=3
| APPENDIX 17 | LIST OF REFERENCES re LAW, THE LEGAL PROFESSION, and WOMEN IN THE LAW |
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‘Boundaries are sometimes a mental imposition – a decision to divide the world a certain way. They become real when social patterns come to enforce the imaginary walls and when once-deliberate choices become mindless habits’.\textsuperscript{1}