

GPO BOX 2388, Darwin Northern Territory 0801
TELEPHONE: (08) 8981 5104
FAX: (08) 8941 1623
EMAIL: lawsoc@lawsocnt.asn.au
WEB: www.lawsocnt.asn.au
ABN: 62 208 314 893



LAWYER RECRUITMENT AND RETENTION IN AUSTRALIA

Introduction

The idea of pursuing a nationally coordinated initiative to address issues of attracting and retaining lawyers to various sectors of the legal profession was first raised at the Conference of Law Societies (COLs) meeting in March 2008.

At the meeting, the President of the Law Society Northern Territory (LSNT) agreed to contact each constituent body to seek their input and assistance in the following areas:

- Identifying the “sectors” of the legal profession whose needs may need to be considered for this paper;
- Identifying which sector(s) of the profession are experiencing problems of recruitment or retention of lawyers;
- Identifying the concerns of the profession of recruiting and retention of lawyers to the various sectors; and
- Working towards the development of nationally coordinated policies and initiatives to recruit and retain lawyers in the sectors that need it.

In pursuit of this strategically important issue, on 31 March 2008, the LSNT contacted:

- the Law Council of Australia (LCA);
- the Large Law Firm Group Limited (LLFG);
- the Law Institute of Victoria (LIV);
- the Queensland Law Society (QLS);
- the New South Wales Law Society (NSWLS);
- the Law Society of South Australia (LSSA);
- the Australian Capital Territory Law Society (ACTLS);
- the Law Society of Western Australia (LSWA); and
- the Law Society of Tasmania (LST).

Since then, the LCA has given further consideration to this issue and initiated the formation of a working group to investigate the matter and provide recommendations.

At the time of writing, LSNT has received responses from: LCA; LSWA; ACTLS; NSWLS; and LIV's 2007 Survey of Exiting Practising Certificate Holders.

Responses

The following is a brief summary of the issues identified in the each of the responding parties' submissions.

Law Council of Australia

The issue of lawyer retention had recently been considered by the Access to Justice, Australian Young Lawyers, and the Legal Education Committees.

An annotated bibliography from the Legal Education Committee's work was provided, which highlighted particular problems in retaining:

- female students – despite nearly 70% of law graduates being female; and
- new or young lawyers – generally defined as those less than 35 years of age or with less than 6 years in practice.

The thrust of the findings is that inflexible and long hours are key influences on the attrition of women. Women lawyers often find it harder to develop mentors, tap into informal networks within law firms, build business development skills and promote themselves. Other reports provide that women leave when their capabilities are not valued or their contributions are not acknowledged or recognised. In contrast, men are more likely to join partners for breakfast or lunch, to write for publications, and to join law firm governance committees, all of which advantage as aspirant to promotion.

Similarly, new or young lawyers base their decisions on issues such as “treatment by partners” and “interesting work” when evaluating firms. However, firms have responded by raising salaries rather than providing associates with rewarding experiences that support personal growth and development.

The Australian Young Lawyers Committee is currently developing a proposal for a national survey about the rates of depression among young lawyers, which is considered to be a factor for lawyers leaving the profession.

The Access to Justice Committee has been considering problems with recruiting and retaining lawyers in rural, regional, and remote areas. There are fewer lawyers working in this sector and those currently in it are aging. The Committee proposes to examine a range of incentives to address this problem, such as asking the government to relieve HECS debt from graduates if they practice in this sector.

Law Society of Western Australia

The LSWA has been involved in a program called the “Country Lawyers Project” for the past 12 months. It is aimed at improving the recruitment and retention of lawyers in regional and remote areas throughout Western Australia, and is a joint initiative between LSWA, Legal Aid WA, Community Legal Centres, and Aboriginal Legal Services.

Data emerging based on the experience of associated partners and from the program at this stage, suggests that anecdotally, the recruitment and retention of lawyers to the various sectors relate to:

- Housing availability and affordability;
- Increasing salaries; and
- Professional isolation.

ACT Law Society

There is a skill shortage in the ACT legal profession across the board: professional, paralegal and support staff. Professional staff are demanded in all areas of law. It is difficult to recruit staff, and once recruited, it is difficult to retain them.

Retention difficulties are largely due to a bidding war within the profession and from other industries. Firms have reported considerable mobility between law practices in the private and public sectors with a general increase in recruitment costs commensurate with these challenges.

Training costs have also increased. Experienced junior paralegal and support staff are difficult to find, so firms are forced to “train up” their recruits.

Canberra faces the unique position of strong competition from a dominant public sector. Under the former government, the public sector expanded with the Commonwealth becoming the pacesetter for wages. It is unknown what effect the current Government’s “razor gang” will have; as there is a feeling legal staff will not be cut.

There is also anecdotal evidence that graduate numbers may be in decline across Australia. In addition, many graduates view law as a general degree and have no intention of practising.

NSW Law Society

The NSWLS provided their *2007 Profile of Solicitors of NSW*.

The Paper revealed that:

- Gender and Growth:
 - In 2007, 43.7% of solicitors were female;
 - The proportion of male solicitors has been in steady decline since 1988 of 79.8%;
 - In 2007, female solicitor numbers increased by 7.7%, while male solicitors increased only by 2.2%;

- Age:
 - The average age of NSW solicitors in 2007 was 41.2 years. Female solicitors had an approximate average age of 36.6 years, compared to men with 44.7 years;
 - In 2007, solicitors aged 29 or less made up 19.9% of the profession, with women comprising 13.1%; aged 30-39 were 29.8%, with women 15.3%; aged 40-49 were 23.1%, with women 9.4%; aged 50-59 were 18.7%, with women 4.5%; and aged 60+ were 8%, with women accounting for 1.1%.

- Years since Admission:
 - On 2 October 2007, more than a third of the profession (36%) had been admitted for 5 years or less (with 12.7% admitted less than one year), around a quarter (27.4%) for 6 to 14 years, and another third (36.6%) for 15 years or more. Of all solicitors, 54.5% were admitted in the past 10 years.
 - The changing gender profile of the profession is reflected in the fact that more female solicitors than males were admitted in the past 10 years. Of all female solicitors, 69.1% had been admitted in the last 10 years, while only 43.0% of all male solicitors had. Among those admitted for 11 years or more, 57.0% are male and only 30.9% are female.

- Location:
 - As at 2 October 2007, over half of the profession (53.2%) were practising within the Sydney CBD.
 - The proportion of solicitors working in the CBD has increased since 1988 (49.9%), but in the last few years has remained relatively stable. Over the same period there has been a steady decline in the proportion of solicitors practising in rural areas, from 16.7% to 13.3%.
 - Since 1997, the trend for increasing numbers of firms to be located in Sydney's suburbs continues to rise. In 2007, half of all law firms (52.6%) were located in the Sydney suburbs, an increase from 2006 (51.8%) and 2005 (50.8%). Of the remaining firms, just under a quarter (23.7%) were located in the CBD, while 22.6% were in regional and rural NSW.

- Employment Sector:
 - The majority of solicitors in NSW (71.2%) continue to work in private practice. Of the other major sectors of the profession, 17.2% are corporate solicitors and 11.3% are government solicitors.
 - The proportion of all solicitors working in private firms has decreased over the period since 1988 (78.1% down to 71.5%), although the actual *number* of solicitors in private practice has increased. Since 1988 there has been a large increase in the proportion of solicitors working in the corporate sector (6.7% in 1998, 17.2% 2007), while the proportion of solicitors working in government has remained steady (10.3% in 1998, 11.3% 2007).
 - Female solicitors working in private practice accounted for 38.9% of total solicitors (63.7% of women solicitors), 59.8% in Government (15.4% of women), and 53.0% in Corporate (20.9% of women).

- Income:
 - As in past years, male respondents reported higher incomes than females overall. For example, 42.9% of all men, but only 25.9% of women, reported incomes over \$100,000; meanwhile, 23.5% of all women, compared with 17.4% of men, reported incomes of \$50,000 or less.
 - Comparing male and female salaries, however, is complicated by the fact that men and women are not equally distributed across the main employment sectors. As earlier, female practitioners tend to be younger and more recently admitted than males, and relatively more female practitioners work part-time.

Law Institute of Victoria

The LIV supplied their 2007 *Survey of Existing Practising Certificate Holders*. The survey was based on a random selection of 150 legal practitioners previously certified to practise law in Victoria by the Legal Services Board, but who did not renew their Practising Certificate (PC) in 2007.

The three reasons cited by exiting practitioners as their *main* reason for non-renewal were:

- Leaving the legal profession to change careers – 20% (21% in 2005);
- No longer doing legal work in current role – 19% (was 10%); and
- Transferring interstate to practice law – 19% (was 9%).

In studying the responses received, five distinct themes emerged as to why practitioners were not renewing their PCs:

- Career Change:
 - Leaving legal profession – 20%
 - No longer doing legal work – 19%
 - Taking up government solicitor role – 7%
- Locational Change:
 - Transferring interstate – 19%
 - Working overseas – 7%
- Lifecycle Factors:
 - Parental leave – 9%
 - Retiring – 8%
- CPD Obligations (too onerous) – 12%
- Personal Factors / Issues:
 - Health – 5%
 - Taking extended leave for other reasons – 4%
 - Unable to get flexible work arrangements – 2%

Non-renewal appears to be a function of various factors rather than just one or two main ones. Also, quite a few of these practitioners are remaining in the industry, although not necessarily in Victoria or in their current role. Furthermore, no evidence of *major* difficulties / dissatisfaction (with practising law) was reflected in the findings.

Among the 20% who indicated that they were *leaving the legal profession to change careers*, no specific career path stood out.

34% of the respondents expected to re-apply for a Victorian PC in the future. Among the 34%, most expected to do so *in the next 5 years* (84%), with a solid minority saying they would *in the next year* (41%).

83% of the total sample were not LIV members or were unsure of their intentions. Amongst those, approximately two in three (68% of the 83%) were keen to remain up to date with changes to the Law / Legal profession in the foreseeable future.

In Victoria, an average of more than 500 Practising Certificate holders do not renew their practising certificate each year.

Objectives

Anecdotally, there is a problem of recruitment and retention of lawyers in Australia. This problem appears to be affecting the profession generally, and is not confined to any specific sectors.

Legal Profession Composition

Participants

Women are becoming an increasingly large component of the legal profession. For example, in NSW, women comprised only 20.2% of solicitors in 1988, compared to 43.7% in 2007. This is due to female students being the bulk of new graduates, approximately 60-70%, which is steadily replacing the natural attrition of senior lawyers.

This is coinciding with the increasing prevalence of Generation Y, those born between 1980 and 2000, in the legal profession. In 2007 in NSW, 19.9% of solicitors were encompassed in this demographic.

In addition, the number of solicitors with low experience levels is also significant. NSW had 23.3% solicitors with between 1-5 years since Admission, and 12.7% with less than one year.

It is these two areas, women and young solicitors (in age and/or experience), that have the highest recruitment and retention problems.

Sector

Information specific to sector employment composition was provided only by NSWLS. While there will be divergence between other States and Territories data compared to NSW, the NSWLS information is considered a reasonable representation of the legal profession's average makeup across Australia.

- Employment by Sector:
 - The majority of solicitors in NSW (71.2%) continue to work in private practice. Of the other major sectors of the profession, 17.2% are corporate solicitors and 11.3% are government solicitors.
 - The proportion of all solicitors working in private firms has decreased over the period since 1988 (78.1% down to 71.5%), although the actual *number* of solicitors in private practice has increased. Since 1988 there has been a large increase in the proportion of solicitors working in the corporate sector (6.7% in 1998, 17.2% 2007), while the proportion of solicitors working in government has remained steady (10.3% in 1998, 11.3% 2007).
 - Female solicitors working in private practice accounted for 38.9% of total solicitors (63.7% of women solicitors), 59.8% in Government (15.4% of women), and 53.0% in Corporate (20.9% of women).

- Location by Sector:
 - Over half of the profession (53.2%) were practising within the Sydney CBD.
 - The proportion of solicitors working in the CBD has increased since 1988 (49.9%), but in the last few years has remained relatively stable. Over the same period there has been a steady decline in the proportion of solicitors practising in rural areas, from 16.7% to 13.3%.
 - Since 1997, the trend for increasing numbers of firms to be located in Sydney's suburbs continues to rise. In 2007, half of all law firms (52.6%) were located in the Sydney suburbs, an increase from 2006 (51.8%) and 2005 (50.8%). Of the remaining firms, just under a quarter (23.7%) were located in the CBD, while 22.6% were in regional and rural NSW.

Reasons for Participant Recruitment and Retention Problems

Women

Despite more than 50% of law graduates being women, female solicitors face a number of challenges in the legal profession leading to problems of recruitment and retention. These problems are generally based around two themes – inequality and work-life balance. Common problems highlighted by women for either changing employers or leaving the profession include:

- Earning less than their male counterparts;
- Lower promotion rates, ie not progressing through the profession's hierarchy;
- Better opportunities with government and corporate employers;
- Experiencing discrimination and harassment;
- A lack of tax relief for child care arrangements;
- A person's worth to an organisation is solely based on hours of service;
- Poor quality of work;
- Organisational culture;
- Inflexible work practices;
- Professional growth and development; and
- Quality of life.

Research papers have presented several recommendations as to how firms and the wider legal profession may improve the conditions for women, and thus increase recruitment and retention rates. The recommendations include:

- Flexible work practices;
- Equal opportunity briefing policies;
- Antidiscrimination policies;
- Improved work-life balance;
- Improved vocational guidance for school students;
- More rigorous selection processes for law students;
- Consideration of law as a second/post-graduate degree;

Other reports recommend that firms review the effectiveness of billing as a performance measure and consider alternatives focused on outcomes, quality, and customer service.

Another recommendation is firms consider incorporation as an alternative to a partnership structure and broader recruitment policies to increase the diversity in personnel.

Generation Y and/or Inexperienced Lawyers

The LIV's *2007 Survey of Exiting Practising Certificate Holders* revealed that of those practitioners surveyed not renewing their practising certificate, 16% were junior solicitors and 11% were mid-level solicitors. Losing over a quarter of young practitioners from a state, for one reason or another, is a significant amount. This is particularly concerning in a country with an aging population.

Generation Y, who will be taking over from approximately 30% of the current workforce soon to be eligible for retirement, have a different set of values to Generation X and Baby Boomers.

Younger and/or inexperienced lawyers have cited many similar problems presented by female solicitors. Examples include:

- Salary;
- Lack of promotion;
- Lack of work-life balance;
- Bullying;
- Inappropriate senior associate behaviour;
- Workload;
- Ineffective human resources department or personnel;
- Lack of training provided;
- Better opportunities elsewhere; and
- Lack of clear career path.

To respond to the challenges that inexperienced lawyers present, particularly Generation Y, the following guidelines should form the basis of any recruitment and retention plan:

- Wherever possible, provide challenging work that really matters;
- Offer increasing responsibility as a reward for achievements as they happen;
- Provide ongoing training and learning opportunities;
- Allow some flexibility in day-to-day scheduling;
- Treat them as colleagues, not as beginners or kids;
- Use innovative ideas for creating a more comfortable, low-key, low-stress workplace; and
- Focus on work outcomes, but be personable and have a sense of humour.

Human resource research shows that Generation Y desires a fun, relaxed and non-traditional workplace. Even those employed in an office situation, Generation Y expect to spend less than 50 percent of their time behind a desk.

Legal firms and the profession as a whole must embrace the changing values that the younger solicitors possess, as they will very soon be the dominant force in the workplace.

Reasons for Legal Sector Recruitment and Retention Problems

Limited research has been undertaken into which specific sectors of the legal profession are struggling with the recruitment and retention of staff. However, the LIV's *2007 Survey of Exiting Practising Certificate Holders* provides some insight and guidance into areas that may be more acutely experiencing these difficulties.

Sector by Employment

Of the 150 practitioners surveyed who were not renewing their practising certificate:

- 53% were from private practice;
- 22% were commercial/corporate business;
- 18% were Government department/agency;
- 3% were Community legal service/Legal Aid; and
- 4% listed Other.

The main areas of practice of practitioners no longer renewing their certificates were:

- 30% Litigation (incl. Commercial Litigation / Personal Injury);
- 22% Property Law;
- 20% Commercial Law;
- 10% Insurance; and
- 10% Wills / Probate.

Sector by Location - Rural & Remote Legal Practices

Another sector that struggles to attract staff are firms located in rural and remote areas. This problem is not confined solely to the legal profession however, with many other occupations failing to attract suitable people, such as doctors, dentists, tradespeople, and teachers.

Reasons cited for difficulty in attracting staff to these locations are:

- Geographical isolation;
- Professional isolation;
- Difficulties in sourcing affordable housing;
- Financial considerations;
- Family issues;
- Lack of ongoing training;
- Not having the appropriate skill set to begin with;
- Working conditions; and
- Salary

A collaborative approach may be more feasible for these rural and remote centres. For example, advertising on a region-by-region basis for all skilled professionals, rather than trying to fill all of the shortfalls for rural solicitors in a non-collaborative approach with other employment types.

Conclusion

Empirical evidence suggests that the recruitment and retention of lawyers may be more problematic in some legal practice sectors when compared to others¹.

For instance, from the evidence above, retaining women and younger or inexperienced lawyers, appears particularly difficult for larger, private law firms, who deal mainly in litigation, property, and commercial matters.

State and Territory Director of Public Prosecutions' offices also have problems recruiting and retaining staff, despite the important role they play in the community.

The WALs and NSWLS submissions highlight that recruiting appears to be the major problem for rural and regional law practices. Firms in other localities, such as CBDs and suburban precincts, apparently do not have such difficulties.

Conversely, most areas of corporate and government organisations have fewer problems recruiting and retaining practitioners. Salary levels in these sectors are commensurate with other sectors and competitive compared to other professions. In addition, these areas generally have more structured and steady workloads, allowing a better work-life balance.

¹ See eg: "Staff Getting Itchy Feet", *Australasian Law Management Journal*, Autumn Issue 2008, 4; Shivani Gupta, "The Power of Passion", *Australasian Law Management Journal*, Autumn Issue 2008, 14-15; and "Young Professional Exodus from NW Coast", *ABC News*, www.abc.net.au/news/stories/2008/05/21/2251020.htm, last accessed 21/05/2008.

Next Step

These issues are widespread and while the emphasis of the problem changes between various locations, most sectors of the profession seem to have issues in common.

The issue should be coordinated nationally, but in such a way that input from the affected sectors is maintained.

For that reason, it is suggested that LCA coordinate the establishment of a working party.

This group should include representation from all sectors, such as private law firms, sole practitioners, the university sector, government, rural legal services and firms, young lawyers, and law students. It should also include members of the Legal Practice section of the LCA.

Further research should then be conducted into the reasons for lawyer recruitment and retention deficiencies, to clarify a set of target issues to address.

A range of solutions should then be considered to deal with this increasingly costly issue. There may be suitable national or profession wide strategies, which may assist, such as:

- HECS relief for solicitors who practice in a certain geographic location or for a certain time;
- tax benefits, allowing more child care access for instance; or
- developing a national profession based advertising campaign, similar to that recently conducted by the Certified Practising Accountants.

A suggested time frame for the working party to complete a review and report back is at the next COLs meeting in approximately 12 months time.

I would like to acknowledge the assistance of Mr Angus McDonald, Policy Officer of the Law Society NT and Secretariat staff in preparing this paper.



Duncan McConnel
President