



Women in the Law in the South Pacific

Survey Report

February 2014

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South Pacific Lawyers' Association

The South Pacific Lawyers' Association (SPLA) was established in 2008 by Pacific bar leaders, with support from the International Bar Association in partnership with the Law Council of Australia and the New Zealand Law Society. The SPLA seeks to support the development of the legal profession and its peak professional associations in the South Pacific region.

Housed within the Secretariat of the Law Council of Australia Secretariat, the SPLA works closely with member associations to advocate the administration of justice, as well as the development and improvement of law throughout the South Pacific region.

The SPLA seeks to support members to:

- Improve delivery of and access to continuing legal education;
- Improve complaints and discipline handling processes for lawyers;
- Advocate for law reform and the improvement of laws, particularly those relating to the regulation of the legal profession;
- Support legal assistance services and the delivery of legal aid;
- Promote and share legal practice and legal education information resources.

Members

American Samoa Bar Association

Cook Islands Law Society

East Timor Bar Association

Fiji Law Society

Kiribati Law Society

Law Council of Australia

Nauru Law Society

New Zealand Law Society

Niue lawyers

Norfolk Island Bar Association

Papua New Guinea Law Society

Samoa Law Society

Solomon Islands Bar Association

Tuvalu lawyers

Tonga Law Society

Vanuatu Law Society

Get in touch

Website: www.southpacificlawyers.org

Email: info@southpacificlawyers.org

Telephone: +61 2 6246 3717

Fax: +61 2 6248 0639

Street address: 19 Torrens St Braddon ACT

Postal address: GPO Box 1989 Canberra 2601

Acknowledgment

The SPLA thanks the Law Council of Australia and our member associations for their continued support, which has made this investigation possible.

1. Executive Summary

1.1 Objectives of the Survey

The objectives of the Survey were to:

- compile demographic data on women in the law in the South Pacific region; and
- identify perceptions of discrimination against women in the legal profession.

1.2 Background to the Survey

At the South Pacific Lawyers' Association Roundtable on 11 July 2011, members discussed the gender imbalance of legal practitioners in the South Pacific. Participants noted that the 2010 figures from the University of the South Pacific indicated that over 50% of enrolled law students were female; that across the region there are relatively equal numbers of female and male law school graduates; but that this trend has not translated to greatly increased numbers of female lawyers, law firm partners, magistrates or judges in countries across the South Pacific.

Representatives of member associations agreed that a preliminary analysis of the participation of female practitioners should be undertaken in member countries with a view to identifying core demographic data and to identify areas for further research.

1.3 Methodology

A survey was developed by the SPLA Women in Law Committee, chaired by the Hon. Eselealofa Apinelu, Attorney-General, Tuvalu, in consultation with the SPLA Secretariat.

In late 2011 the Survey was distributed to the following SPLA constituent members:

- Cook Islands Law Society;
- Fiji Law Society;
- Kiribati Law Society;
- Nauru lawyers;
- Niue lawyers;
- Norfolk Island Bar Association;
- Papua New Guinea Law Society;
- Samoa Law Society;
- Solomon Islands Bar Association;
- Tonga Law Society;
- Timor Leste Bar Association;
- Tuvalu lawyers; and
- Vanuatu Law Society.

The Law Council of Australia and the New Zealand Law Society provided reference data from previous studies into women in the legal professions of Australia and New Zealand.

The Survey sought to gather qualitative and quantitative data to facilitate statistical comparisons between surveyed countries and reference countries and to assist in identifying potential areas of gender based discrimination for future research.

The Survey examined the ratio of female to male graduates and the number of women in the legal profession in South Pacific Island countries who are:

- lawyers in private practice;
- lawyers employed in the government or in-house sector;
- members of the law association councils across the region; and
- judicial officers (judges and magistrates).

Opinion was also sought as to whether there are equal opportunities for females to study law and gain employment; whether there is equal pay; and whether there are any cultural practices that may act as barriers towards equality in the legal profession.

By May 2012, responses were received from all countries, with the exception of Timor Leste. Based on the survey responses and the draft report, the Women in Law Committee developed draft recommendations. The final recommendations in this Report remain largely unchanged.

This Report uses the collected data to identify gaps in knowledge, providing the basis for a number of recommendations for further research. Issues that may be preventing women from entering or remaining in the legal profession are also discussed.

1.4 Summary of Findings

The Legal Profession

- In the respondent jurisdictions approximately 34% of the legal profession are female. This compares with:
 - Australia (45.4%);
 - New Zealand (44.2%); and
 - United States of America (31%).
- Jurisdictions with the smallest percentage of female lawyers were:
 - Norfolk Island (0%);
 - Vanuatu (21%);
 - Papua New Guinea (29%); and
 - the Solomon Islands (29%).
- Jurisdictions with the highest percentage of female lawyers were:
 - Nauru (60%);
 - Samoa (58%); and
 - Kiribati (51%).

Private Practice

- In respondent jurisdictions, approximately 30% of lawyers in private practice are female. This compares with:
 - Australia (40.5%);
 - New Zealand (40.2%); and
 - United States of America (32.5%).
- Excluding Papua New Guinea,¹ women account for approximately 31% of all lawyers in private practice.
- Jurisdictions with the smallest percentage of female lawyers in private practice were:
 - Norfolk Island (0%);
 - Vanuatu (15%);
 - Solomon Islands (19%); and
 - Tonga (20%).
- Jurisdictions with the highest percentage of female lawyers in private practice were:
 - Samoa (53%);
 - Kiribati (63%);
 - Tuvalu (100%); and
 - Niue (100%).

Government / in-house

- In respondent jurisdictions women account for approximately 44% of all lawyers employed in Government / in-house roles. This compares with:
 - Australia (57.9%);
 - New Zealand (58%); and
 - United States of America (30%).
- Papua New Guinea and the Cook Islands are the only jurisdictions in which there are more women in private practice than in government / in-house positions. In all other respondent jurisdictions there are significantly more women employed in government / in-house practice than in private practice.
- Excluding Papua New Guinea, 57% of government lawyers in the region are female.

The Judiciary

- In total there are 26 female judges and magistrates in respondent jurisdictions.
- Seven out of the eleven jurisdictions surveyed have only one or no female judicial officers.

¹ Papua New Guinea is home to approximately half of the region's lawyers. Accordingly, the Report presents regional data both including and excluding Papua New Guinea to show any bias.

1.5 Recommendations

Perceptions of equal opportunity for employment are difficult to measure. Given equal or better graduation rates and the under-representation in the profession by women in most jurisdictions it is apparent that female law graduates are: failing to find employment within the legal profession in their original jurisdiction; finding employment in non-surveyed jurisdictions; or not seeking/finding employment.

Future research should prioritise examination of possible inequities in pay and seek to identify specific cultural practices which create gender inequality and how such inequalities may impact on gender equality within the legal profession.

A comprehensive study examining wages of legal professionals across the private and public sectors is needed to accurately record wage equality. It would also be desirable to examine data on the post admission experience of women and men at different levels within the government and in-house sector to determine whether actual inequities exist in terms of experience and qualifications of female and male lawyers.

A literature review and further research should be conducted to identify cultural practices that impede or discriminate against women and how these practices may affect participation of women in the profession. Particular focus should be given to gender bias regarding domestic roles, such as the prevalence of leaving work to care for children or other family members.

Further research should be conducted in South Pacific countries to collect data identifying:

- the number of women in senior positions in private practice, government, the in-house sector and in the judiciary compared with men;
- the average number of years of post admission experience of women in senior positions in private practice, government, the in-house sector and in the judiciary;
- actual salaries of female and male lawyers – based on employer and individual level data collection;
- the rates at which female and male lawyers leave the legal profession;
- the availability and utilisation of services to relieve women in carer roles such as maternity and child care support, aged care, disability services etc;
- the availability and utilisation of mentors in the legal profession; and
- the use of affirmative action policies and programs to redress gender imbalance in the legal profession.

The South Pacific Lawyers' Association will incorporate some of these recommendations into its 2014 Pacific Legal Profession Survey.

1.6 Women in the Law in Australia, New Zealand and the United States

A brief analysis of observed trends in the representation of women in the legal profession in Australia, New Zealand and the United States is provided at **Attachment A**.

2. Representation of women in the legal profession

The Law is not immutable. It is influenced by those who perpetuate it as policy makers, judges and lawyers.

If the law only reflects one mindset and one set of cultural experience it will remain imperfect, excluding and invalidating the experience of others.

Fiona McLeod SC, Chair of the Law Council of Australia's Equalising Opportunities in the Law Committee
co-author with Patricia Eastaol of *Women and the Law in Australia*, LexisNexis, 2010.

The SPLA recognises the importance of gender equality and equal opportunity in the law. The SPLA believes that the legal profession has a key role to play in supporting initiatives to advance the status of women in member countries and advocating for changes to laws that discriminate against or adversely affect women.

Globally, women are under-represented in the legal profession and particularly under-represented in senior roles.² In Australia, New Zealand and the United States, peak legal professional associations have acknowledged the underrepresentation of women in the legal profession as an on going problem and have – often in partnership with government – commissioned studies to better understand gender inequality in the profession and to improve the recruitment and retention of women in the profession.

A brief analysis of recent studies in Australia, New Zealand and the United States is provided at **Attachment A** and this information been used to assist in the formulation of the recommendations.

² Please note that the Survey and this report exclude Australia, New Zealand and Timor Leste.

3. Key findings

3.1 Women in the legal profession

Table 1 shows demographic data of female lawyers in: the profession; in private practice; in government legal roles; in judicial positions; and representation on executive councils of peak legal professional associations.

Table 1: Women in the legal profession

Jurisdiction	Total lawyers ³	Female lawyers		Female lawyers in private practice		Female government/ in-house lawyers		Female judicial officers ⁴	Females on Law Society/Bar Association Councils
		Total	%*	Total	%*	Total	%*		
Cook Islands	56	22	39%	12	21%	10	18%	1	2
Fiji	350	142	41%	71	20%	71	20%	6	0
Kiribati	33	17	51%	5	15%	12	36%	0	2
Nauru	10	6	60%	1	10%	5	50%	1	1
Niue	6	3	50%	1	17%	2	33%	0	N/A
Norfolk Island	9	0	0%	0	0%	0	0%	0	0
Papua New Guinea	879	259	29%	175	20%	84	10%	3	1
Samoa	92	53	58%	21	23%	32	35%	1	4
Solomon Islands	100	29	29%	8	8%	21	21%	2	2
Tonga	53	22	42%	8	15%	14	26%	0	6
Tuvalu	13	5	38%	1	8%	4	31%	8	N/A
Vanuatu	117	25	21%	6	5%	19	16%	4	29
Total	1718	583	34%	309	18%	274	16%	26	47
Total excluding Papua New Guinea⁵	839	324	39%	134	16%	190	23%	23	46

* All percentages expressed as against total percentage of lawyers.

³ Figures taken from the South Pacific Lawyers' Association '2011 Needs Evaluation Survey for South Pacific Lawyer Associations.' Excludes judicial officers.

⁴ Includes judges and magistrates.

⁵ Papua New Guinea is home to approximately half of the region's lawyers. Accordingly, the Report presents regional data both including and excluding Papua New Guinea to show any bias.

In the respondent jurisdictions there are approximately 583 female lawyers which equates to 34% of the legal profession. This compares with Australia (45.4%),⁶ New Zealand (44.2%)⁷ and the United States of America (31%).⁸

Jurisdictions with the smallest percentage of female lawyers were: Norfolk Island (0%); Vanuatu (21%); Papua New Guinea (29%); and the Solomon Islands (29%).

Jurisdictions with the highest percentage of female lawyers were: Kiribati (51%); Samoa (58%); and Nauru (60%).

Table 2 shows the total number of female lawyers in each jurisdiction expressed as a percentage of the total number of female lawyers in the jurisdiction.

Table 2: Female lawyers as a percentage of total female lawyers

Jurisdiction	Total female lawyers	Female lawyers in private practice		Female government/ in-house lawyers	
		Total	%*	Total	%*
Cook Islands	22	12	55%	10	45%
Fiji	142	71	50%	71	50%
Kiribati	17	5	29%	12	71%
Nauru	6	1	17%	5	83%
Niue	3	1	33%	2	67%
Norfolk Island	0	0	-	0	-
Papua New Guinea	259	175	68%	84	32%
Samoa	53	21	40%	32	62%
Solomon Islands	29	8	28%	21	72%
Tonga	22	8	36%	14	64%
Tuvalu	5	1	20%	4	80%
Vanuatu	25	6	24%	19	76%

⁶ Urbis. 2011 Law Society National Profile, Law Society of New South Wales, Sydney, May 2012. available at <http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/640216.pdf> (accessed 14 April 2013).

⁷ Law Society of New Zealand. 2011 A Snapshot of the Legal Profession, Wellington, April 2011. Available at http://www.lawsociety.org.nz/_data/assets/pdf_file/0012/36300/snapshot-of-the-nz-legal-profession.pdf (accessed 14 April 2013). By 2013 this has increased to 45%, see Law Society of New Zealand. 2013 A Snapshot of the Legal Profession, Wellington, March 2013. available at http://www.lawsociety.org.nz/_data/assets/pdf_file/0012/64011/Snapshot-2013-Web.pdf (accessed 14 April 2013).

⁸ American Bar Association Commission on Women in the Legal Profession. A Current Glance at Women in the Law 2011, January 2011. Available at <http://www.americanbar.org/groups/women/resources/statistics.html> (accessed 20 December 2013). See further: National Association of Women Lawyers and The NAWL Foundation. Report of the Sixth Annual National Survey on Retention and Promotion of Women in Law Firms, October 2011. Available at: <http://crgp.ucsd.edu/documents/GenderinLegalProfessionsCaseStudy.pdf> (accessed 20 December 2013); also see Catalyst. Catalyst Quick Take: Women in Law in the U.S. New York: Catalyst, Available at http://www.catalyst.org/knowledge/women-law-us#footnote4_5c84nsz (accessed 20 December 2013).

Jurisdiction	Total female lawyers	Female lawyers in private practice		Female government/ in-house lawyers	
		Total	%*	Total	%*
Total	583	308	53%	274	47%
Total excluding Papua New Guinea	324	134	41%	190	59%

*expressed as a percentage of total female lawyers

The data in Table 2 emphasises the disparity in the representation of women in private practice compared with government / in-house practice in smaller jurisdictions.

It is interesting that in Fiji the total representation of women in the legal profession is approaching parity (41%) and women are also represented equally in private and government / in-house practice.

The Cook Islands too have achieved close to equal representation of men and women in the legal profession.

3.1.1 Private legal practice

There are 309 women in private practice in respondent jurisdictions. This represents 34% of lawyers in private practice in respondent jurisdictions.⁹

This compares with Australia (40.5%),¹⁰ New Zealand (40.2%)¹¹ and the United States of America (32.5%).¹²

Table 3 compares the total number of lawyers in private practice, as reported in the 2011 Needs Evaluation Survey for South Pacific Lawyer Associations with the number of female lawyers in private practice.

⁹ Figures taken from the South Pacific Lawyers' Association '2011 Needs Evaluation Survey for South Pacific Lawyer Associations.'

¹⁰ Urbis, above n. 6.

¹¹ Law Society of New Zealand, above n. 7. By 2013 this has increased to 45.6%.

¹² National Association of Women Lawyers and The NAWL Foundation, above n. 8 see also American Bar Association. "Lawyer demographics", 2011. Available at: http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.authcheckdam.pdf (accessed 20 December 2013).

Table 3: Female lawyers in private practice

Jurisdiction	Total lawyers in private practice ¹³	Female lawyers in private practice	
		Total	%*
Cook Islands	32	12	38%
Fiji	230	71	31%
Kiribati	8	5	63%
Nauru	0	1	. ¹⁴
Niue	1	1	100%
Norfolk Island	4	0	0%
Papua New Guinea	591	175	30%
Samoa	40	21	53%
Solomon Islands	42	8	19%
Tonga	41	8	20%
Tuvalu	1	1	100%
Vanuatu	40	6	15%
Total	1,030	309	30%
Total excluding Papua New Guinea	439	134	31%

* expressed as a percentage of total lawyers in private practice.

Jurisdictions with the smallest percentage of female lawyers in private practice were: Norfolk Island (0%); Vanuatu (15%); Solomon Islands (19%) and Tonga (20%).

Jurisdictions with the highest percentage of female lawyers in private practice were: Samoa (53%); Kiribati (63%); Tuvalu (100%); Niue (100%).

¹³ 2011 Law Society National Profile, above n. 6.

¹⁴ Discrepancies in data for Nauru are likely due to differences in dates of data collection. Standardisation of data collection methods should be a priority for future surveys.

3.1.2 Government / In-house

Table 4 shows the total number of lawyers in government / in-house legal roles, as reported in the 2011 SPLA Needs Evaluation Survey for South Pacific Lawyer Associations, compared with the total number of female lawyers in these roles as reported in this Survey. It should be noted that as data was not collected contemporaneously caution is advised in direct comparisons.

Table 4: Female lawyers in Government / in-house practice

Jurisdiction	Total lawyers government / in-house ¹⁵	Female lawyers government /in-house	
		Total	%
Cook Islands	12	10	83%
Fiji	120	71	59%
Kiribati	25	12	48%
Nauru	7	5	71%
Niue	5	2	40%
Norfolk Island	5	0	0%
Papua New Guinea	288	84	29%
Samoa	52	32	62%
Solomon Islands	48	21	44%
Tonga	11	14	127% ¹⁶
Tuvalu	10	4	40%
Vanuatu	37	19	51%
Total	620	274	44%
Total excluding Papua New Guinea	332	190	57%

¹⁵ Figures taken from the South Pacific Lawyers' Association '2011 Needs Evaluation Survey for South Pacific Lawyer Associations.'

¹⁶ Discrepancies in data for Tonga are likely due to differences in collection methods by the Tonga Law Society (which provided data for the 2011 Needs Evaluation Survey) and the Tongan Women in Law Association (which provided data for the Women in Law Survey and differences in the dates for data collection. Standardisation of data collection methods should be a priority for future surveys.

In respondent jurisdictions there are 274 women employed in government / in-house positions. This represents 44% of the approximately 620 lawyers employed in Government / in-house roles.¹⁷ Excluding Papua New Guinea, 57% of government lawyers in the region are female.

This compares with Australia (57.9%),¹⁸ New Zealand (58%)¹⁹ and the United States of America (30%).²⁰

Papua New Guinea and the Cook Islands are the only jurisdictions in which there are more women in private practice than in government / in-house positions. In all other respondent jurisdictions there are significantly more women employed in government / in-house practice than in private practice.

Based on research in other jurisdictions, possible reasons for the significant difference between private and government sector employment could include:

- Working conditions in government / in-house practice compared with private practice, particularly maternity leave, access to flexible hours/part time work;
- Greater opportunities for promotion in a larger organisation;
- Opportunities for mentoring more accessible in government/in-house positions;
- Due to increased mobility within the large organisation, ability to gain a wide range of experience and pursue specialties of interest.

Further research is needed to determine underlying reasons for differences in the representation of women in private practice and the government / in-house sector.

3.1.3 The judiciary

In the respondent jurisdictions there are approximately 26 female judges and magistrates. Data was not collected on the total number of judges in each respondent jurisdiction. However, with just 26 female judicial officers in surveyed jurisdictions, seven of which have one or fewer female judicial officers, it is apparent that women are underrepresented on the bench in respondent jurisdictions.

This compares with Australia (23.4%),²¹ New Zealand (28%)²² and the United States of America (26%).²³

¹⁷ Based on data reported in the 2011 South Pacific Lawyers' Association Needs Evaluation Survey for South Pacific Lawyer Associations which identified that there were 619 lawyers in government / in-house practice.

¹⁸ Urbis, above n. 6.

¹⁹ Law Society of New Zealand, above n. 7.

²⁰ above n. 8 and 12. Includes data for Government and Business/Industry.

²¹ Van Onselen, Ainslie. *Gender gap in the judiciary is still way too wide*, The Australian, 8 July 2011. Available at <http://www.theaustralian.com.au/business/legal-affairs/gender-gap-in-the-legal-system-is-still-way-too-wide/story-e6frg97x-1226090158942> (accessed 18 December 2013). As at 4 July 2013, this percentage has increased to 33.53%. See Australian Women Lawyers. *Gender in the Australian Judiciary 2013 v 1995*, media release, 4 July 2013. Available at http://www.australianwomenlawyers.com.au/uploads/publications/F_-_4_July_2013_AWL_Media_Release_Gender_in_the_Australian_Judiciary.pdf (accessed 18 December 2013).

²² above n. 7.

3.2 Equal Opportunity

Table 5 shows the perceptions of peak legal professional associations regarding equal opportunities available to women in the legal profession including in relation to study, employment, equal pay and cultural practices which result in discrimination against women.

In some jurisdictions (Tonga, Solomon Islands) responses were referred to existing women lawyer associations by the peak legal professional association.

Table 5: Equal opportunity

Country	Do women have equal opportunities with men to study law or obtain employment?	Do women receive equal pay for equal work?	Are there any cultural practices which result in discrimination against women
Cook Islands	Y	No response	N
Fiji	Y	Y	Y
Kiribati	Y	Y	N
Nauru	Y	No response	N
Niue	No response	N	N
Norfolk Island	Y	Y	Y
Papua New Guinea	Y	Y	N
Samoa	Y	Y	N
Solomon Islands	Y	N	Y
Tonga	Y	Y	Y
Tuvalu	Y	Y	Y
Vanuatu	Y	Y	N

Table 5 shows that peak legal professional associations perceive that women have equal opportunities when it comes to studying law, or obtaining employment within the legal profession. In Niue and the Solomon Islands there is a perception that women do not receive equal pay for equal work. In Fiji, Norfolk Island, the Solomon Islands and Tonga, peak legal professional bodies identified that cultural practices exist which hinder or discriminate against women advancing within the legal profession.

²³ above n. 8.

Future research should prioritise examination of possible inequities in pay and seek to identify specific cultural practices which discriminate against women and how these impact on the advancement of women within the legal profession.

3.2.1 Equal opportunity to study law or obtain employment

Most respondents across the countries of the South Pacific noted that data was not collected by the peak legal professional association on graduates; although there was a general perception that there is equal opportunity for women and men to study law. This perception is supported by enrolment and graduation figures from the University of the South Pacific, Australia and New Zealand and the University of Papua New Guinea²⁴ which show that there are currently equal or more women than men graduating with law degrees.

Perceptions of equal opportunity for employment are difficult to measure. Given equal or better graduation rates and the under-representation in the profession by women in most jurisdictions, it is apparent that female law graduates are failing to find employment within the legal profession in their origin jurisdiction, are finding employment in non-surveyed jurisdictions, or are not seeking/finding employment.

3.2.2 Equal pay

Peak legal professional associations do not perceive disparities in pay for female lawyers in the respondent jurisdictions.

Most respondents noted that remuneration in government practice is consistent for men and women, and that in private practice salaries are based on experience, qualifications and performance, and not on gender.²⁵ The Nauru Law Society noted, however, that women tend to be channelled into certain positions, particularly in the public service, which attract a lesser salary than their male counterparts.

Some jurisdictions noted possible inequities in processes for the promotion and advancement of women within government.

A comprehensive study examining wages of legal professionals across the private and public sectors is needed to accurately record wage equality in the legal profession. It would also be desirable to examine data on the post admission experience of women and men at different levels within the government and in-house sector to determine whether actual inequities exist in terms of experience and qualifications of female and male lawyers.

3.2.3 Cultural practices

Countries within the South Pacific region have ingrained cultural beliefs and practices. Respondents from Fiji, Norfolk Island, Tonga and the Solomon Islands each noted the presence of cultural practices that discriminate against women. The Fiji Law Society noted that Fiji has been evolving in terms of gender equality, however women may still perceive a “glass ceiling” in

²⁴ The three primary destinations for law students from South Pacific Countries are the University of the South Pacific, Australian and New Zealand universities and the University of Papua New Guinea.

²⁵ This Survey did not look at the number of female lawyers in senior positions in the public service and private practice.

terms of career progression. The Fiji Law Society also noted that women's rights activists are well-represented in the legal profession, and that they contribute significantly to the development of parity for men and women both in the profession and wider society.

In relation to its cultural practices, the Tonga Law Society noted that change will only result if women themselves want the change and actively lobby for it. A survey conducted in 2001 by the Women in Law Association revealed that women were happy with the status quo, particularly in relation to the denial of rights to women to register land under the *Land Act*.

Some of the survey respondents noted that whilst there are no cultural practices that discriminate against women, economic circumstances have resulted in women being channelled into more domestic responsibilities as opposed to being encouraged into high level career positions. Contributing factors may also include the lack of familial support mechanisms such as access to child care, particularly for women who can only find employment in capital cities or commercial centres, lack of availability of paid maternity leave, etc.

In Nauru, maternity leave is only legislated for public servants. There are no employment laws which ensure maternity leave for women working in the private sector. This remains a barrier for many young women.

A literature review and further research should be conducted to identify cultural practices which discriminate against women and how these practices may contribute to the representation of women in the legal profession.

Women in the law in Australia New Zealand and the United States

Over the past three decades the number of women graduating from law school and practising law has grown enormously in most western societies.²⁶ However there are still disparities in relation to senior positions and pay across countries such as Australia, New Zealand and the United States.

Australia

Despite the fact that women now make up more than half of graduates from law schools across Australia and are entering into the profession in ever greater numbers, there is still an ongoing gender-based disparity within the legal profession, particularly at senior levels.

In Australia the main areas of concern have been in relation to:

- the retention rates for women in legal practice;
- the representation of women in senior legal roles including partners of law firms, senior counsel, and judges; and
- issues of pay equity between male and female practitioners.

The *2011 Law Society National Profile*, which reports on the number of women in the legal profession in Australia, demonstrates how far women have come – and how much further they have to go to achieve equality.²⁷ Key findings in the Report include:

- many women are enjoying rewarding and successful legal careers, but there are still barriers for women solicitors who want to progress in their careers;
- key impediments to the advancement of women include lack of availability of flexible working arrangements and difficulties returning to work after an absence such as maternity leave;
- networking and mentoring are crucial to achieving success in the legal profession and more efforts are required to ensure women can benefit from such factors;
- barriers for women solicitors are more obvious in private practice, with more junior women leaving private practice in the first five years of practice than junior men;
- there are significantly fewer women than men at partnership level in private firms, despite increases over the past five years;
- the proportion of women solicitors is greater in the in-house and government sectors than it is in private practice; and
- feedback suggests it is more likely for women to be in positions of leadership in in-house and government organisations than in private practice.²⁸

To help rectify the gender imbalance in law firms, the Report makes a range of recommendations, including:

²⁶ Above n **Error! Bookmark not defined.**

²⁷ The Law Society of NSW. *Thought Leadership 2011: Advancement of Women in the Legal Profession* (2011) <http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/579007.pdf> (accessed 15 April 2013).

²⁸ Above n **Error! Bookmark not defined.**

- publishing information to assist practitioners and employees who are considering flexible working arrangements;
- developing continuing legal education (CPD) training for practitioners returning to work after parental leave or other absences;
- identifying additional opportunities for mentoring of practitioners at key stages of their career;
- holding workshops for women who wish to enhance their business development or personal networking skills; and
- investigating commissioning further research on the gender breakdown of senior legal appointments across all segments.²⁹

A national survey of court appearances in superior courts conducted in 2009,³⁰ demonstrated that while female barristers regularly appear in superior courts, their appearances are, on average, significantly shorter than that of their male colleagues. The survey found that, while women appear across Australia in the same proportion as they are represented at the Bar, on average male barristers appear for 3.8 hours, while female barristers appear for 2.8 hours.

Disproportionately short appearances for women suggests that they may not be being briefed on matters which are as complex or contentious as those in which their male colleagues are appearing. This can restrict the capacity of female barristers to develop a reputation for excellence which might form the basis for appointment as Senior Counsellor or ultimately, appointment to the bench. Making shorter appearances also inevitably results in a pay disparity.

The pay disparity experienced by women barristers in Victoria (the average appearance time for women was 3.6 hours as opposed to 5.8 hours for men) was confirmed in a submission to the House of Representatives Standing Committee on Employment and Workplace Relations Inquiry into pay equity.³¹

The Victorian data reveals that there is a significant disparity between the average fees earned by male and female barristers in that state, which suggests that female barristers are receiving lower fees than their similarly qualified and experienced male colleagues. At the very least, it confirms the existence of an indirect form of pay inequity through the briefing of women in less complex or shorter matters.

The Law Council of Australia developed a *Model Equal Opportunity Briefing Policy for Female Barristers and Advocates* which was released in 2004 and updated in 2009 and renamed the *Equitable Briefing Policy*. This policy is not an affirmative action plan, but requires those who adopt it to make "all reasonable endeavours" to:

- identify female counsel in the relevant practice area;
- genuinely consider engaging such counsel;
- regularly monitor and review the engagement of female counsel; and

²⁹ *Ibid.*

³⁰ The Law Council of Australia funded a 2009 research survey to obtain robust, reliable and replicable data on the segment of the legal community that appears before Australian superior courts. The concept for the research was developed in association with the Australian Women Lawyers, and the results are available from the Law Council of Australia's website at <http://www.lawcouncil.asn.au/programs/national-policy/eol/survey.cfm>.

³¹ Submission Number 141 of the Victorian Bar in *Response to the Inquiry Into The Causes of Potential Disadvantage in Relation to Women's Participation in the Workforce*, (6 March 2009).

- periodically report on the nature and rate of engagement of female counsel.³²

New Zealand

The number of women and men graduating from New Zealand's law schools has been roughly the same since the 1990s, however out of the total number of partners at law firms in New Zealand, only 18.24% are women. Women also represent only 26.03% of the judiciary.³³

To improve these statistics, the general consensus is that the profession needs to adopt flexible diversity initiatives and better promote women's mentoring and networking.

United States

In the United States, women have been graduating from law schools at approximately the same rate as men for the last two decades but women comprise only 16% of law firm equity partners; 14% of governing committees of law firms, and just 6% of firms have women managing partners.³⁴

Roberta Liebenberg, Chair of the American Bar Association Gender Equity Task Force believes firm leadership must send a strong message that everyone (male and female) must be involved in securing equal opportunities and retention of female lawyers. Even clients can play a vital role in ensuring their female advocate is receiving the credit she earns for the work performed.

Liebenberg also believes that mentoring plays a vital role in career development – especially for young women lawyers. More seasoned female lawyers should reach out to young women lawyers to pass on learned insights on office politics and work/life balance.³⁵

In 2008, in the United States, women lawyers earned just 75% of their male counterparts' salaries. If given the same rate of change, it is estimated that it will take more than a woman lawyer's lifetime (if born in 2010) to achieve equality in pay rates.³⁶

Conclusion and future research

The statistics from Australia, New Zealand and the United States demonstrate ongoing disparities in both remuneration and status between men and women lawyers in practice, despite around 20 years of equal numbers graduating from law schools. Detailed research is needed to identify underlying reasons for disparities in the representation and pay of women in the profession. In March 2014, the Law Council of Australia will release results of its National Attrition and Reengagement Study. Through this study, the Law Council is seeking to obtain quantitative data and confirm trends in progression of both male and female lawyers. The 'NARS Report' will include practical measures that legal associations and law practices can implement to address the causes of high attrition among female lawyers, and to reengage women who have left the profession.

³² The *Equitable Briefing Policy* is available from the Law Council of Australia's website at http://www.lawcouncil.asn.au/programs/national-policy/eol/meobp/meobp_home.cfm (accessed 12 April 2013).

³³ Human Rights Commission, *New Zealand Census of Women's Participation*, 2010. Available at http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/05-Nov-2010_09-29-40_HRC_Womens_Census_2010_WEB.pdf (accessed 12 April 2013).

³⁴ American Bar Association Commission on Women in the Legal Profession above n. 8.

³⁵ Johnson, Angela N. *ABA Podcast: Fixing the Leaky Pipeline*, 28 December 2010, *Researching Women as Lawyers, Women in the Legal Profession: Disparity in Law School, Inequality as Lawyers*, WordPress Blog, 2010. Available at <http://womenslawyers.wordpress.com/category/equality-in-law-firms/> (accessed 12 April 2013).

³⁶ As estimated by Catalyst: Angela N. Johnson, 'Stats at a Glance,' *Researching Women as Lawyers, Women in the Legal Profession: Disparity in Law School, Inequality as Lawyers*, WordPress Blog, 2010. Available at <http://womenslawyers.wordpress.com/stats-at-a-glance/> (accessed 12 April 2013).