

Demographic Diversity in the WA Bar: A Consistent Failure to Frame the Right Question?

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Executive Summary

The brief

This report was prepared to investigate the various demographic imbalances noticed at the WA Bar. We present the investigation in two parts: first, a literature review which examines the state of contemporary scholarship in this area; second, a survey of students, practitioners and barristers conducted with a view to compiling a picture of the various 'cultures' that exist at law school, in the legal profession and at the bar.

The literature review

In relation to the literature review, we found that there is a significant lack of rigorous scholarship in relation to the causes of demographic imbalance in the legal profession generally, and specifically in relation to the WA Bar. In particular, there is little data to test the various propositions as to the causes of the demographic inequities such that they remain, at best, suppositions.

Notwithstanding this lack of data, we found that most of the authors agreed upon certain recommendations for addressing the inequity. These mostly focus on increasing the capacity of women to progress through the profession and while they are laudable goals, we question whether there is any basis for suggesting that implementing these recommendations will actually improve the issue of demographic inequity.

Ultimately, we conclude that more detailed research is needed if we are to address the problem with any degree of precision. Additionally, a focus on broad cultural change in the profession, rather than a focus on making the profession more accepting of women and other minorities, may be the more appropriate and successful methodology for addressing the issues.

The study

The new research that we undertook aimed to gain insight into what, if any, barriers students and early-career practitioners perceived to commencing practice at that bar. Additionally, we surveyed practicing barristers as to various aspects of their experience as barristers. We also asked all groups to report on their sense of 'belongingness'.

The results were interesting. Overwhelmingly, the students reported that they perceived their grades and lack of knowledge about how to become a barrister, were the biggest impediments to a career at the bar. For legal practitioners, the overwhelming concern was financial. However, responses also indicated that the participants considered gender to be an impediment to progression to the bar.

The 'culture' and cultural change

Our analysis of these responses indicates that there seems to be a strong 'cultural' aspect to practice at the bar. That is, students who felt a strong sense of belongingness were more likely to know how to become barristers and to want to become barristers. It also seems that this cultural aspect forms during law school, and may form as early as high school.

The research suggests that we could achieve a greater diversity of 'cultures' at the bar by making some 'cultural' changes. These would include increasing the education, support and pathways to becoming a barrister, and working on changes that would increase practitioners and students' sense of belongingness to the profession. We conclude that perhaps this focus on a 'culture change' could start as early as law school (and perhaps even high school).

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1. Introduction

We have conducted this research at the request of the WA Bar Association as part of a preliminary investigation into issues of diversity at the Australian Bar. Specifically, the brief has been to investigate what reasons exist for the various demographic imbalances noticed at the WA Bar.

In undertaking the literature review, the authors were struck by how little quantitative research has been undertaken in this area in Australia. While some states have undertaken statistical analysis of the makeup of their bars,¹ there remains a paucity of hard data in the area generally, and in relation to the participation of people from marginal groups, as barristers specifically. As Gleeson and Sofroniou noted in 2004, "...there does not appear to have been any formal study concluded into this precise question. We are unaware of any expenditure by the Bar, the universities or other bodies on research into the issue [of women's participation at the Bar]."² This remains substantially the case today and raises the difficulty that many of the accounts of why demographic inequity exists at the Bar are anecdotal and speculative rather than based on quantitative analysis.

While Gleeson and Sofroniou refer to studies into women's participation at the bar, we would like to make it clear at this point that our focus for the study and literature review did not set out to focus solely on the experience of women. However, the Australian literature and the literature in general tend to focus on the issues faced by women more than any other 'cultural' group. Consequently, the literature review reflects the focus of the current Australian scholarship. Clearly, however, we need more research if we are to come to terms with precisely what forces are causing demographic inequities at the bar. Other demographic inequalities— racial or sexual minorities – suffer from an even more acute lack of data in the Australian context.

This is not to suggest that the landscape is bereft of scholarship entirely, quite the opposite, there are many authors and papers in this area. Terry Hutchinson's paper, *Women in the Legal Profession; A Research Start*, gives a comprehensive picture of scholarship in relation to women in law as at 2005. However, it is worth noting that the overwhelming majority of papers cited by Hutchinson in relation to women at the Bar are personal reflections from barristers. While these are of great importance, and afford an excellent insight into the issue from within practice, the lack of scholarly articles suggests the lack of a coherent research strategy to support suggested changes to combating these inequities.

Finally, examination of these issues in a Western Australian context proves a particular difficulty. WA's fused profession, which blurs the distinction between barrister and solicitor, provides a unique research challenge when addressing this issue. It is difficult to make a clear comparison between the WA Bar and those in other states and territories because people working as 'solicitors' in WA may be undertaking work that in other states would be reserved for barristers.

¹ For instance, the NSW bar, see Gleeson and Sofroniou below.

² However, this does not mean that there is no relevant data. In particular, Geraldine Neal's seminal investigation into the experience of sex discrimination among Queensland solicitors: *Unequal Partners*, women solicitors' experiences of workplace discrimination, flexibility and success in Queensland contains a great deal of original, quantitative data: Neal, G (2010) *Unequal Partners? Women Solicitors' Experiences of Workplace, Discrimination, Flexibility and Success in Queensland*. *Unpublished DPhil thesis*. Griffith University. Additionally, Australian Women Lawyers does attempt to collate some statistical data in relation to women's position in the practice of law.

Presently there is no easy way of knowing whether, and if so to what extent, this feature of WA legal practice has an impact on the demographics of the WA Bar.

This Literature Review has focused on an in-depth analysis of a sample of papers, rather than noting in brief the conclusions of a larger number of papers. This methodology was preferred both because of the limited nature of this undertaking as compared to the potential material, but also because of the considerable repetition of similar conclusions across the various materials. The papers chosen comprise a variety of attempts to deal with the issue of demographic inequity at the bar, including personal accounts, statistical analysis and peer-reviewed articles. It captures the diverse nature of scholarship in this area, and represents an apposite cross-section of the material available. The authors hope that by taking a broad approach to the materials chosen for review, we might obtain a well-rounded picture of current approaches to, and theories on, this problem.

Needham, Jane, 'Perceptions Are the Underlying Problem'³

Needham gives a personal account of her 14 years' experience at the NSW bar. In relation to the difficulties she has faced in working at the bar, she states that "[t]he main problems arise from my family responsibilities rather than my gender."⁴ In particular, she cites the issue of part-time work, and the extent to which it is practicable to operate as a 'part-time' barrister. Needham notes, "There is a divergence of opinion on whether you can practice part-time ... I have had to shed some of my solicitors who don't like it, but I have found others who appreciate and support it."⁵

However, in examining Needham's position, one might reasonably query the extent to which the two issues – being a woman, and having family commitments – can be conceptualised separately. The literature generally, views the issue of support for women in part-time roles as an ongoing challenge when it comes to increasing participation of women at the Bar. Needham's experience is one commonly reported by women barristers, that a woman working at the bar part-time is obliged to seek out solicitors who are happy to brief a barrister not working full time. The literature makes continual reference to the need to foster a culture supportive of flexible work practices in order to increase the opportunity for women to participate while maintaining family obligations.

Needham also discusses the common preconceptions she finds people have about a being a woman barrister. She notes that young women, both students and solicitors, are intimidated by the following preconceptions:

- The bar is "blokey" and your tutor must protect you, the reader;
- If you don't have 'protection' you end up isolated; and
- Being a barrister is incommensurate with family responsibilities.⁶

While Needham accepts that, "I do find the Bar quite blokey..." she comments that her experience has been that it has not been actively hostile to women, or in her words, it is not 'blokey, " ...in a football-locker-room way, and I don't find it actively difficult to deal with."⁷

3 [2004] (Winter) *Bar News: Journal of the NSW Bar Association* 42

4 *ibid.*

5 *ibid.*

6 *ibid.*

7 *ibid.*

In relation to the idea of the tutor-as-protector, Needham notes that it has never been her position that a tutor needed to protect a pupil, yet she observes that it is a view that persists among potential barristers. The implication of this view is that at least a percentage of women who consider a career at the bar are worried that it will be a hostile environment to them, because of their gender. Further investigation into the extent to which potential barristers perceive the bar as a hostile environment to women, and what can be done to allay those concerns, is warranted.

Finally, Needham sees that equity could be improved by improving access to child-care services, and showing female students what life at the bar is actually like. In her view, "...attempts to show female law students what real life at the Bar is like can only improve the number of women coming to the Bar."⁸

Adamson, Christine, 'Equity is Equality'⁹

Adamson's paper is an extract from a speech given at the 2004 Bench and Bar Dinner. In it she observes that there seems to be a significant disparity between the genders at the bar and opines that, "[w]hen a profession is dominated by one sex or the other, there is an obvious inference that there are arbitrary forces at work, which have nothing to do with merit."¹⁰ Adamson wonders "...where have all the women I studied with, and worked with, gone, and why don't they come to the Bar?"¹¹

Adamson's position is that, "[p]erhaps unwittingly barristers overstate the risks of coming to the Bar, and discourage people, particularly women, becoming barristers."¹² This is an interesting corollary to the position taken by Needham, who contends that ignorance of practice at the bar leads to ambivalence or fear about attempting a career there. Adamson advances essentially the same position, but adds that the natural conservatism of existing barristers may lead them to exacerbate these negative beliefs about practice at the bar. For example, Adamson describes this message given to aspiring barristers – that before one comes to the bar, one must have cash reserves, extensive contacts and a good deal of litigation experience. Adamson notes that her experience suggests that this is untrue.

The authors would add that one might query the extent to which obtaining these things, in practice, will prove a greater hurdle to women, rather than men. Certainly if the view persists that contacts and litigation experience are essential to success at the bar, the extent to which women are involved in these areas early in their careers will influence at least their own perceptions of 'readiness' for practice at the bar. Indeed, the self-perception of readiness seems to be a crucial piece of the puzzle when it comes to understanding why, in Adamson's words, "...so few of [her] sex have come with me [to the bar]."¹³ Underlying Adamson's position seems to be the suggestion that the issue of self-perception of readiness is one of the 'arbitrary forces' at work which is exacerbating gender imbalance at the bar.

However, not all messages to women who aspire to a position at the bar are so benign. Adamson relates one experience whereby,

[m]any years ago, when I had been at the Bar for about a year, I attended a christening. The host introduced me to a silk who is now a District Court judge. As soon as he heard I

8 ibid.

9 [2004] (Winter) *Bar News: Journal of the NSW Bar Association* 33

10 ibid, 34.

11 ibid.

12 ibid.

13 ibid.

was a barrister he said, 'Good, my daughter wants to go to the Bar. Come and tell her the Bar's no place for a woman.'

I told him that I could not do so, because my experience was to the contrary.¹⁴

Like Adamson, while recognising that the anecdote in question is now some 20 years old, it would be foolhardy to suggest that such messages to young women considering joining the bar are simply a thing of the past. Similarly foolhardy would be the suggestion that any professional association of lawyers has the capacity to stop individuals expressing such opinions – nor would it be at all desirable. Nevertheless, acknowledging that these attitudes persist will aid professional associations in recognising the need to promote an encouraging message to young women considering a career at the bar, indeed in promoting an encouraging message to any young solicitor considering a career at the bar.

Finally, Adamson believes that “[f]or the Bar to be an effective, useful and respected institution ... it should reflect at least the pool of people who are legally qualified, if not society as a whole”, and reflects that the danger of becoming unrepresentative is that, “[o]ne possible consequence is that the executive will find it easier to sideline the views of the Bar. In these times, we need a strong independent Bar to remind the executive of the importance of the civil liberties which the common law has developed.”¹⁵

Gleeson, Justin and Sofroniou, Rena, 'Why Are There So Few Women at the Bar?' [2004]¹⁶

This paper undertakes a statistical analysis of demographics in relation to the NSW bar. As noted above, Gleeson and Sofroniou lament that, “...there does not appear to have been any formal study concluded into this precise question. We are unaware of any expenditure by the Bar, the universities or other bodies on research into the issue”¹⁷, though they do note the work of Lydiard and Ettinger.¹⁸

Gleeson and Sofroniou note the changing numbers of men and women coming to the NSW Bar. They note that in NSW during the 1980s on average about 10 women per year commenced at the bar, with between 70-90 men commencing annually. In the 1990s that changed to 30 women and around 100 men. Since 2000 the numbers of barristers commencing, both male and female has dropped.

The data reveals that age is a factor, and the disparity between genders diminishes the more junior the group of barristers considered. So, for barristers of 15 years experience or more there are 800 males and only 50 females. For barristers of ten years experience or more this changes to 1100 males and 90 females.

In relation to changing demographics, their analysis demonstrates that in the seven years leading to 2004, approximately 25% of admissions to the Bar in NSW were women, and that overall in 2004 for Barristers between zero and four year's experience, 32% were women. Gleeson and Sofroniou note that if these trends were to continue, one would expect participation rates for women at the bar to improve. Indeed, examination of the most up to

¹⁴ ibid.

¹⁵ ibid.

¹⁶ (Winter) *Bar News: Journal of the NSW Bar Association* 27

¹⁷ ibid.

¹⁸ Virginia Lydiard and Geri Ettinger, 'Law lawyers and society' (1981) updated 'Women in law in NSW' (2003)

date NSW Bar statistics reveals that in 2009, women comprise some 18% of NSW barristers. This is up from 14.7% in April, 2004.

However, our own further analysis of this increase reveals a surprisingly slow rate of progress towards gender equality at the NSW Bar. Currently, the proportion of barristers who are women in NSW is increase at about 0.5% per year, and this rate of change has remained steady for the past 10 years. If we project this current rate into the future, the prediction suggests women will make up 50% of barristers in NSW by approximately 2073.

The paper also notes that an entry rate of 25-30% of women barristers in the 5 years to 2004 should be viewed against a background of approximately 60% of law graduates in NSW being women in the same timeframe. Gleeson and Sofroniou go on to comment that this figure "...suggests that the Bar is less attractive to women than men. There must be reasons for this."¹⁹

Travers, Jen, *The Glass Ceiling*²⁰

Travers examines the existence of a 'Glass Ceiling' for women lawyers in Australia. She notes that, "[t]he question arises whether there is an explanation for a sharp decline in the numbers of women in the profession after four to five years of practice."²¹ Additionally her paper examines,

[t]he effects of barriers to career progression of women ... both in the crucial early career years, and again when women attempt to step beyond the traditional role of employed practitioner into the partnership roles and positions of greater power and influence at the Bar and in the profession.²²

In relation to women barristers, Travers contends that one of the reasons for the under-representation of women at the Bar is that women feel excluded from traditionally male social networks and therefore, from progression to the Bar. Additionally, she considers that women are excluded from being briefed on high-value commercial work, which would give them opportunities for career advancement. While noting the Law Council of Australia's *Model Equal Opportunity Briefing Policy for Female Barristers and Advocates*, Travers notes that to date there is limited data, which measures the effectiveness of the policy. She suggests that absent such data, "...it is difficult to have faith in a process that involves making such important decisions."²³

Travers also identifies that the issue of gender inequity is not limited to practice, and may well have roots in legal education, arguing that a lack of knowledge is a substantial cause of gender inequality. In making suggestions as to how the issue of gender inequality might be dealt with, Travers contends that, "[p]erhaps educational programs could be initiated in law schools, where the curriculum would include training on gender, women's experiences and interest."²⁴ Indeed, Travers argues that "[u]nless the curriculum addresses gender issues, it legitimises and perpetuates the existing biases in the legal system and the practice of law."²⁵

¹⁹ Gleeson and Sofroniou, n17.

²⁰ (2008-2009) 11 *Newcastle Law Review* 93

²¹ Travers, above, n21, 95.

²² *ibid.*

²³ *ibid.*, 117.

²⁴ *ibid.*, 119.

²⁵ *ibid.*, 120.

Eastman, Kate, Sex Discrimination in the Legal Profession²⁶

Eastman's 2004 article examines issues of sex discrimination in the law, that is in relation to the *Sex Discrimination Act 1984 (SDA)* and its provisions, but also more generally. She begins with an analysis of now familiar statistics, that women comprise more than 50% of law graduates, but in 2004, less than 40% of practicing solicitors in NSW, and only 14% of barristers. Additionally, Eastman notes Kirby J's comments that when you consider barristers who regularly appear in speaking roles before the High Court, that number drops considerably. Eastman then asks, "whether the disparity between women graduates and the women practitioners/judges is related to sex discrimination."²⁷

Eastman cites a 2000 Keys Young survey, which found that 37% of women solicitors reported gender discrimination. Additionally, a 2001 NSW Law Society survey found that 47% of women reported gender-based harassment or discrimination. Only 3% of men reported similar incidents. Eastman's position is that in spite of clear legislative framework in the form of the *SDA* and the *Equal Opportunity for Women in the Workplace Act 1999, (EOWW)*, "... in reality, the barriers continue to exist."²⁸

Additionally, Eastman notes that,

[t]he reluctance of women lawyers to use available legal remedies cannot be readily explained. Anecdotal evidence suggests that lack of awareness, fear of retribution, fear of publicity and drawing adverse attention to themselves, and ineffective remedies act as deterrents to making formal complaints.²⁹

In relation to the participation of women in the legal workforce, Eastman refers to a 1995 Keys Young report, which demonstrated that women lawyers held the majority of community legal positions (60%), and that they were increasingly taking positions in government (41%). Reportedly, women sought these positions both because of a desire to effect change in the community, but also to undertake work in family-friendly environments. We would argue that the insight here is relevant to investigating why women are not taking up positions at the Bar. To the extent that practitioners with backgrounds in commercial law – particularly litigation – and criminal law - dominate the WA Bar, it is possible that this goes some way to explaining the lack of women barristers. Indeed, to the extent that the profession holds the – spoken or unspoken – assumption that the appropriate pathway to a career in the commercial Bar is through work in commercial litigation, it will continue to self-select for young lawyers who take that pathway. A consequence of this appears to be that the understood pathway to becoming a commercial barrister in WA is, in practice, one more often trod by men.

In relation to identifying areas for change, Eastman suggests that there are a number of areas of legal practice, which perpetuate systemic discrimination against women. The first is continuing stereotypical attitudes – held by men and women – about what is appropriate behaviour for women. Here, Eastman notes that in the seminal sex discrimination case *Hickie v Hunt and Hunt*, the Commission raised questions about the female complainant's management style and relationships with other staff. While noting that there is nothing in the decision in *Hickie* to suggest that gendered assumptions formed the basis of those criticisms, Eastman does draw parallels to the earlier case of *Dunn-Dyer v ANZ Banking Group Ltd*, in which the Commission

26 (2004) 27 *UNSW Law Journal* 886

27 Eastman, above, n27, 867.

28 *ibid*, 870.

29 *ibid*.

found that the employer "...had unreasonably negative views of Mrs Dunn-Dyer's managerial and other skills because he characterised her as a woman..."³⁰

Another area identified by Eastman is the type of legal work allocated to women. She cites a Canadian Bar Association study which found that women were more often than men in receipt of so-called 'pink files', that is matters which involved less client contact, more non-legal work, reduced profile and reduced opportunities to develop legal skills. Eastman suggests that firms ought to undertake monitoring of the allocation of their work to determine whether women are suffering similar career-stifling patterns in Australia.

Eastman also identifies a firm culture, which emphasises billable hours, and hence long hours, as a measure of commitment and capacity. She notes that this may well penalise the more efficient legal practitioners, and certainly penalises those who work in part-time roles, the majority of whom are women. Finally, she identifies a lack of female role models, which in her view may cause women to see promotion as "...a challenge rather than a natural progression."³¹

Essentially, Eastman's position is that while "...part-time and flexible working arrangements, mentoring schemes and Model Briefing Policies are all necessary to address the systemic barriers to women's equal participation in the profession..."³² they may not, of themselves, be sufficient.

Justice Michael Kirby, 'Women in Law – What Next?'³³

Justice Kirby's 2001 speech, 'Women in Law – What Next?' begins with his experience of the limited number of female advocates who having speaking roles before the High Court. Kirby J notes that in both 1997 and 2001, the number of women barristers who addressed the Full High Court from the central rostrum was a mere six. Noting that some of the difficulty in relation to maintaining senior women barristers is that many are appointed to the Bench, Kirby J still maintains that, "[t]his is not steady as she goes. We have hit the doldrums."

One of the key difficulties identified by Kirby J is legal culture, both in relation to the practicalities of the practice of law, and the kind of culture itself. In relation to the former, Kirby J notes that,

[o]rganising our lives, and reserving a proper space for a full and rounded existence as a human being, is one of the big challenges facing the legal profession of this country. Humanising the life of the legal profession is a demand that can be postponed no longer.

This, he notes, is of particular concern to women, since they are more likely to have family responsibilities. In relation to women barristers particularly, Kirby J comments that,

[j]udges too are sometimes blamed for insensitivity, as for example in pressing the hearing of cases beyond the normal court hours without regard to the needs of women advocates, in particular, to attend to their family responsibilities. Yet if complaint is made about such practical problems, women advocates may be denounced as grizzlers who would not, or could not, face up to the practical necessities of life in a gruelling profession.

30 Eastman, above, n27, 874.

31 *ibid*, 875.

32 *ibid*, 876.

33 Victorian Women Lawyers Association – Lesbia Harford Oration, Melbourne, 20 August 2001, <http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_vicwomen.htm> at 12 January 2011.

In relation to the kind of culture which exists in the legal profession, Kirby J relies on the Victorian Bar Association's report which "[i]dentified many of the difficulties faced by female advocates. It did so with uncensored honesty." Additionally, Kirby J notes that, from time to time, he hears of instances of harassment, "mainly from the young female associates who are shocked that, for peace-sake, the targets all too often accept such behaviour without complaint. "Dobbing" is alien to the professional culture of the law."

Kirby J is scathing of the 'explanation' that women are unable to progress to the highest levels of the practice of law because of 'broken career syndrome', that is the idea that since many women take time off from the practice of law to have children and then return, their 'broken' career means that they are unable to progress as far as men. Kirby J shares, here, his own experience as a young barrister in the 1970s taking a break from the practice of law. He recounts that,

My colleagues, ashen-faced, warned me that my 'broken career' would never recover. Indeed, that it was the end of my legal career, if not the end of civilisation. It did not prove so. On the contrary, on my return to practice a year later, I was able to change the direction of my practice and to cut away work that I did not want to do. We went overland again for a year in 1973 and the same warnings were given. But I was not a victim of the broken career syndrome. I was male. Bigger and better work flowed in.

In focusing on both the pragmatic 'requirements' of legal practice and the culture of law, Kirby J invites improvement on both fronts. To redress inequity as regards women in the practice of law, Kirby J sees that active discrimination against women must cease, but also that, "...unconscious systemic bias [must be] realised and banished."

Foster, Lorne, *Lawyers of Colour and Racialized Immigrants with Foreign Legal Degrees: An Examination of the Institutionalized Processes of Social Nullification*³⁴

Foster examines the issue of the participation of racial minorities in Canadian legal practice. Foster contends that the Canadian legal practice, while ostensibly championing diversity, allows "...racialised lawyers equal access to the profession, but not access as equals."³⁵ In other words, he still sees systemic barriers precluding full integration of lawyers who are members of a racial minority. So, while there may be equal access, he notes that Canadian studies have demonstrated that "...non-White lawyers consistently lagged behind White lawyers in every substantively significant category – including representation, status and pay."³⁶

Such a lack of full integration may explain why, despite equal access policies, Aboriginal Canadians and members of a visible minority were vastly under-represented in the Canadian legal profession, both when compared to the population at large and as a proportion of the workforce generally. Additionally, Foster notes that "...there are also proportionately fewer visible minority lawyers than there are visible minorities in other professions."³⁷ Compared with lawyers, of whom 9.2% were members of a visible minority, other professions had far more inclusive statistics for minority participation; doctors at 25.9%, engineers 27.3%, university professors 15.2% and 'high-level' managers at 11.2%. Foster also notes that lawyers who are members of a visible minority have reduced mean salaries, compared to their White counterparts.

34 June 2009 2(1) *International Journal of Criminology and Sociological Theory*, 189-217

35 Lorne, above, n35, 189.

36 *ibid*, 190.

37 *ibid*.

While data on the Australian position in relation to Indigenous participation is scant, it would be surprising if our experience were vastly different from that of Canada. With the notable exception of UNSW, no Australian law school has long-running programmes to encourage Indigenous participation, indeed as at 1995, only 11 Australian law schools had such programmes at all. Additionally, in 1995, Indigenous students comprised only 0.5% of Australian law students, some three times less than Indigenous representation in the general population. Indeed, in 2009, Munya Andrews was the only woman Indigenous barrister practicing at the Victorian Bar. Comparisons between Australian and Canadian rates of participation of visible minorities generally are not possible, because of a lack of data in Australia.

Foster contends that in Canada, demographic disparity "...is not the result of blatant acts of racism; it is the result of failing to effectively frame the diversity challenges and benefits of a multicultural society in a way that can produce an integrated understanding."³⁸ Foster opines that the misframing of the issue results in a failure to ask the right questions, and notes that, "[t]he irony is that law societies collectively have so many initiatives to eradicate discrimination they cannot fathom how discrimination can still exist in their ranks."³⁹

In many ways, we would argue that this is the crux of the difficulty here in Australia. No reasonable analysis could conclude that Australia's various law societies and Bar associations have been 'asleep at the wheel' when it comes to dealing with demographic inequity. Much effort has been expended attempting to combat the problem, as evidenced by the existence of many current programmes to encourage indigenous students to study law. Perhaps, however, the difficulty is not a lack of enthusiasm on the part of the legal profession generally, but a poor understanding of precisely the nature and extent of the problem to be tackled, in relation to women, racial and other minorities.

Foster notes, in this respect, that;

... insofar as this is framed as a problem of equal access (formal equality) as opposed to equitable participation (substantive equality), it tends to precipitate disparities in race relations rather than resolve them. What is suggested here is that true diversity goes beyond increasing the number of visible (and other) minorities in the ranks of the legal profession; and should actually be understood as the varied perspectives and approaches to work that these minorities bring to the table.⁴⁰

Foster's dominant thesis is that while racism is no longer acceptable in the Canadian legal community, disparity between White and non-White lawyers persists not because of any biological prejudice, but rather a cultural one. Foster's position is that racial minorities are no longer excluded from mainstream work because of their race per se, rather because they don't "fit in" culturally. The difficulty for Foster is that fairness and equity concern themselves with "...eliminating the last remnants of biological dominance orientation while leaving the cultural dominance orientation of the profession untouched and unproblematic."⁴¹

Foster contends that,

[m]ulticultural inclusiveness remains elusive because it is linked to the policy of increasing numbers or demographic variation, primarily achieved through the elimination of the overt racism and blatant barriers to occupational entry and professional membership. By presupposing the old, biogenetic calculus of domination

38 *ibid.*

39 *ibid.*

40 Lorne, above, n35, 190-191.

41 *ibid.*, 199.

and exclusion, the legal establishment 'overshoots' the more subtle rules and practices that culturally invalidate the aspirations of racialized lawyers for equity.⁴²

Arguably, this is essentially the same problem faced by people who simply do not fit the culture. The challenge, as Foster envisages it, is to measure progress not by recruitment and retention goals, but "...rather than the degree to which conditions allow people to draw on their [particular] personal assets and perspectives to do their jobs more effectively."⁴³

Christopher Kendall and Brian Eyolfson, "One in Ten" But Who's Counting?: Lesbians, Gay Men and Employment Equity⁴⁴

Finally, the authors note a lack of scholarship addressing the question of equity and diversity concerns faced by gay, bisexual, lesbian or transgender people in the legal profession. The authors are not aware of any Australian study, which deals with this issue. This is an omission in the literature that has made it difficult to comment sensibly on the position in Australia. Consequentially, the authors have not attempted to make such a comment, but note that any follow-up research could address this issue because as Kendall and Eyolfson contend;

[t]he adverse consequences of being identified as lesbian or gay result in many employees opting to not disclose their sexual orientation and remaining invisible. This socially imposed silencing often precludes statistical proof of economic or other disadvantage, but should not be taken as indicative that such disadvantage does not exist.

2 Conclusion of Literature Review

A review of the papers above finds a core set of common conclusions about the causes of demographic inequity at the bar and their potential solutions. Indeed, these causes and solutions are broadly mirrored in the overwhelming majority of the literature on point. Lack of support for family commitments, misinformation about the true nature of a barrister's practice and an inhospitable legal culture are viewed as the major barriers to demographic equity. Common solutions include changes to childcare arrangements, flexible working hours, mentoring programmes, model briefing practices, better education for young lawyers and critical examination of the kind of work given to women, racial and other minorities.

Nevertheless, the commonality of responses begs the question; if we understand the causes of inequity and we broadly agree the solutions to the problem, why does the inequity persist?

Notwithstanding this broad consensus, the authors conclude that the existing literature suffers from a lack of detailed statistical data on which to base its conclusions. This lack has hindered commentators, who are able to outline only in broad strokes the more obvious difficulties, which inhibit the progress of women, racial and other minorities. While these contributions are valuable, we need a clearer picture of the break down of the demographics of the Australian legal profession in order to formulate effective methods for combating this difficulty. Further, data in relation to the numbers of lawyers having children; and when, and how much leave or part-time work arrangements lawyers take to care for their children would greatly assist formulating effective solutions to these problems.

⁴² Lorne, above, n35, 200.

⁴³ *ibid*, 207.

⁴⁴ (1995) 27 *Ottawa Law Review* 281

In addition, it seems that the more pressing issue is the need to reframe the debate from a focus on achieving numerical equality, to providing a culture shift in the legal profession. The time has come for us to examine critically whether there is an existing legal monoculture that women, racial and people from other marginalised groups simply do not 'fit in' to. If such a monoculture exists, then we must consider whether its persistence is necessary or even desirable. Many of the authors above note that 'culture' forms part of the barrier faced by women, racial and other minorities, examination of what, precisely, that culture is and how we might change it for the better is long overdue.

Further, integrating this demographic data with self-reporting on how well lawyers feel they 'fit in', would give excellent insight into precisely where the more difficult cultural problems exist. The initial survey undertaken for this pilot project has attempted to begin collating this data by asking 'sense of belonging' questions alongside demographic ones. An expansion of this kind of data would greatly assist in establishing where, if at all, existing legal culture is inhibiting the progress of people who do not fit the culture and give some insight into how we might tackle the problem effectively.

3. The study

3.1 Methodology

The study was conducted during March 2011. It involved sending online surveys to law students studying at the University of Western Australia, University of Notre Dame, Australia and Murdoch University; lawyers practising in Western Australia; and barristers currently working at the Western Australian Bar. In addition, an advertisement was placed in the Law Society's Brief magazine inviting solicitors and barristers to complete the appropriate survey.

Surveys

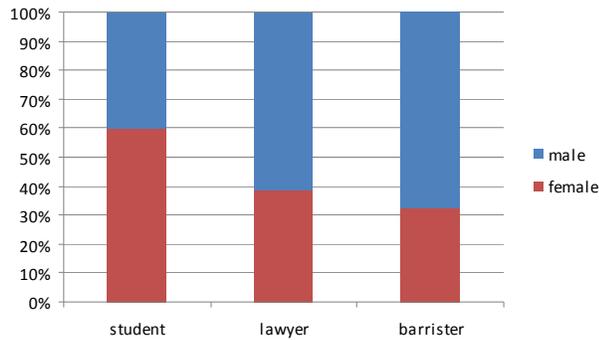
The surveys consisted of demographic questions, questions from the Willms (2003) *Sense of belonging and engagement* survey, and questions relating to the participants knowledge of how to become a barrister (students and lawyers), barriers to becoming a barrister and enjoyment of law school, legal practice or being a barrister. For a full list of the survey variables see Appendix A.

Participants

Four hundred and fifty-six (456) law students, 77 practising lawyers and 44 barristers in Western Australia completed the surveys. It is unclear how many emails reached their recipients but we have gauged that the approximate response rates were 25% for the law students, 15% for the lawyers and 12.5% for the barristers. The demographics for the participants are presented below.

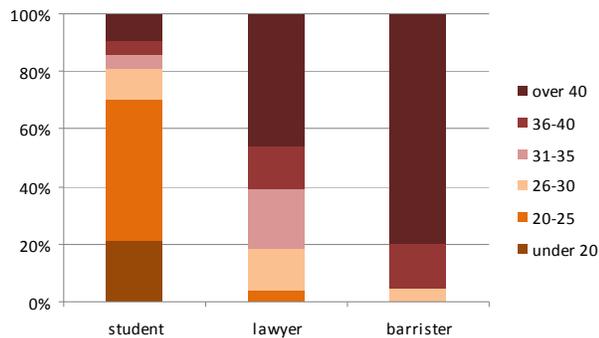
1. **Gender:** Of the student population, 275 students were female and 181 male; of the lawyer population, 29 participating lawyers were female and 46 male; and for the barristers, 14 were female and 29 male.

Figure 1: Participants by gender



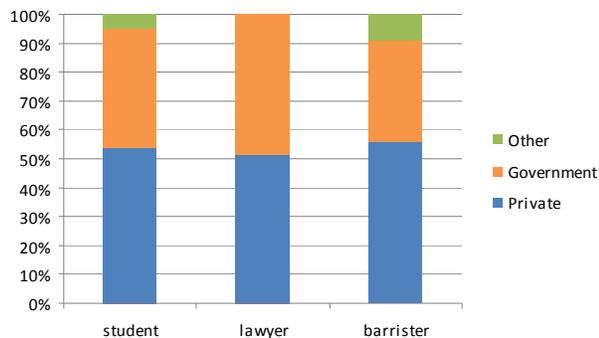
2. **Age:** Of the student population, the age range was from under 20 to over 40; for the lawyer population, the age range was from 20-25 to over 40; and for the barristers, the range was from 26-30 to over 40.

Figure 2: Participants by age



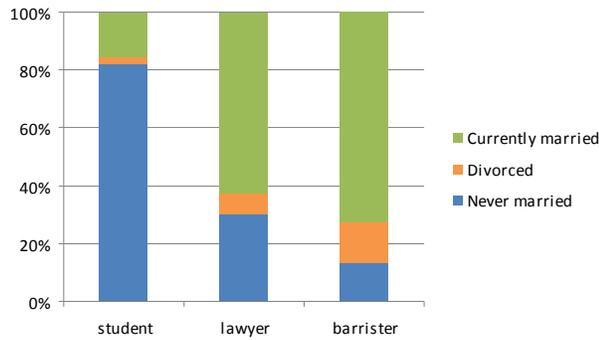
3. **High Schools:** 242 students went to a private high school, 188 went to a government high school and 22 went to another type of high school; 37 lawyers went to a private school and 39 went to a government school; 24 barristers went to a private high school, 15 went to a government high school and four went to another type of high school.

Figure 3: Participants by high-school



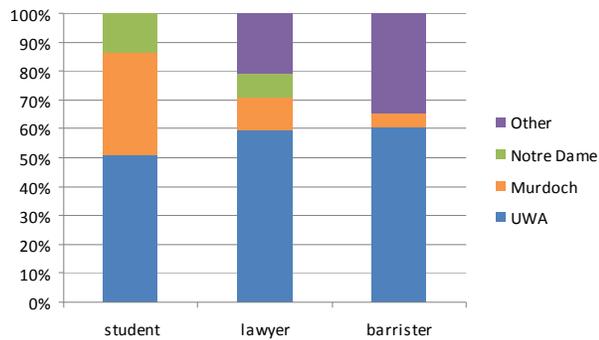
4. **Marital status:** 370 students had never married, 13 were divorced and 69 were currently married; 23 lawyers had never married, 6 were divorced and 48 were currently married; 6 barristers had never married, 6 were divorced and 32 were currently married.

Figure 4: Participants by marital status



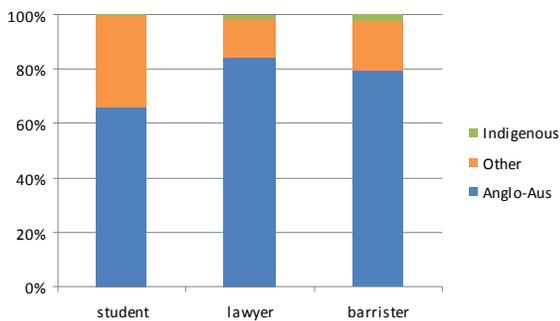
- Law School:** 231 students attended UWA, 162 attended Murdoch University and 61 were currently attending the University of Notre Dame; 43 lawyers attended UWA, 8 attended Murdoch University; 6 attended the University of Notre Dame and 15 attended another law school; 26 barristers attended UWA, 2 attended Murdoch University and 15 attended another law school.

Figure 5: Participants by Law School



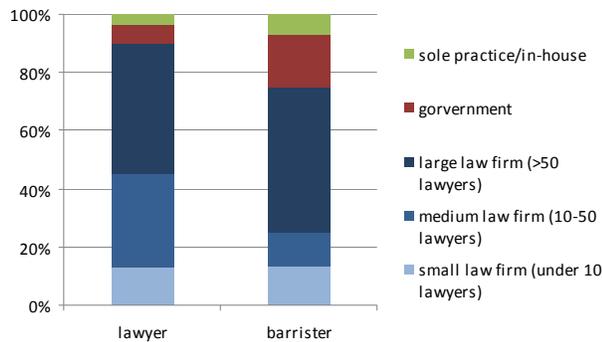
- Racial/Ethnic background:** 298 students described their racial/ethnic background as Anglo-Australian, 2 described their background as Indigenous Australian and 150 described it as something other than these; 65 lawyers described their racial/ethnic background as Anglo-Australian, 1 described his/her background as Indigenous Australian and 11 described it as something other than these ; 35 students described their racial/ethnic background as Anglo-Australian, 1 described his/her background as Indigenous Australian and 8 described it as something other than these.

Figure 6: Participants by ethnic/racial background



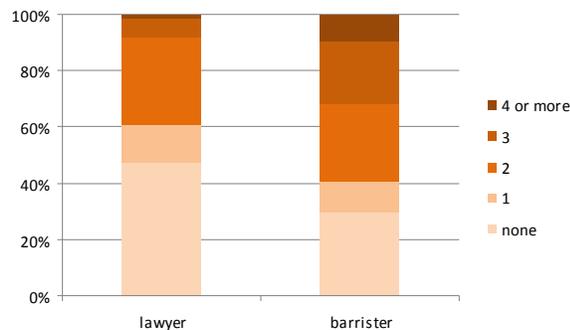
7. **Type of law firm/business:** 10 lawyers said that they currently worked in a small law firm (under 10 lawyers), 25 worked in a medium law firm (10-50 lawyers); 34 in a large law firm (over 50 lawyers), five in government and three were in-house or sole practitioners. Six barristers said that they previously worked in a small law firm (under 10 lawyers), five worked in a medium law firm (10-50 lawyers); 22 in a large law firm (over 50 lawyers), eight worked in government and three were previously in-house or sole practitioners.

Figure 7: Types of firm/business where practising solicitors worked



8. **Type of law practised:** For the lawyers the majority reported practicing commercial litigation (n=38), followed by insurance law (n=9), criminal law (n=6), corporate law (n=6), environmental law (n=4), employment law (n=5), family law (n=3), mining and native title (n=2), construction (n=2), and tax law (n=1). For the barristers the majority reported working in the commercial law area (n=27), followed by criminal law (n=3), family law (n=3), construction (n=3), admin law (n=2), insolvency (n=2), personal injury (n=2) and wills and estates (n=2).
9. **Number of children:** 36 lawyers reported that they had no children and 40 said that they had children, while 13 barristers reported that they had no children and 31 said that they had children. The numbers of children that the participating barristers and lawyers had are presented in the table below.

Figure 8: Number of children: barristers and solicitors



10. **Living at home:** 46% of the law students reported that they lived at home and 54% reported that they lived out of home.

11. **Number of years as a student, lawyer or barrister:** The number of years that the participating students, lawyers and barristers had been studying, practising or at the bar are presented below.

Figure 9: Number of years studying for law students

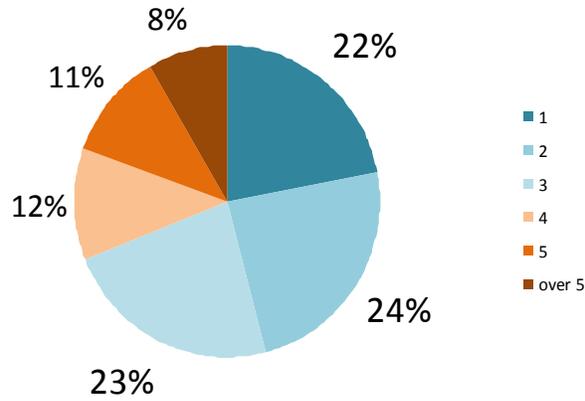


Figure 10: Number of years practising for lawyers

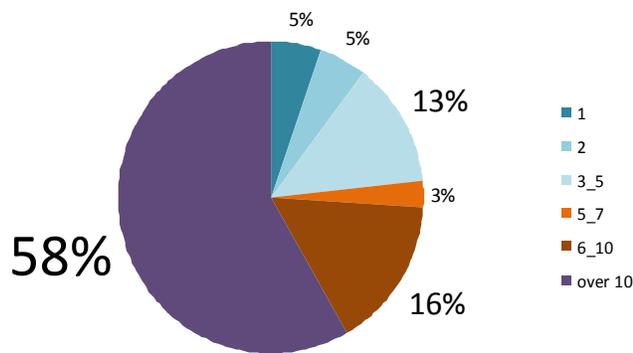
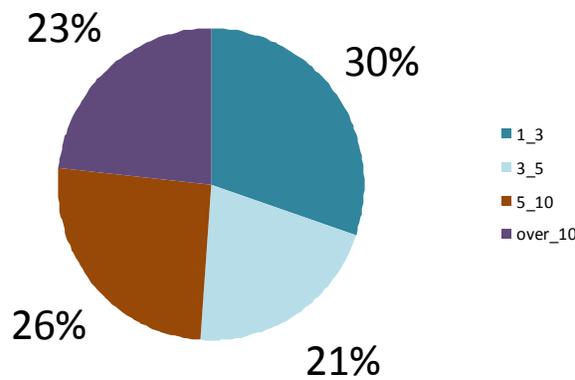


Figure 11: Number of years at the bar for barristers



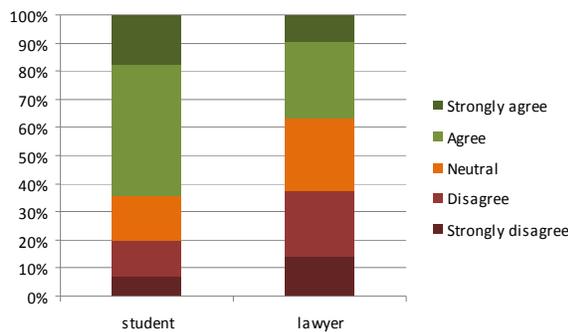
3.2 Results⁴⁵

Wanting to become a barrister:

The numbers of students and lawyers who reported that they would like to become a barrister are reported in the table and figure below.

I would like to be a barrister	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
student	31	59	72	213	81
lawyer	11	18	20	21	7

Table 1 and Figure 12: Responses to the statement, “I would like to become a barrister.”



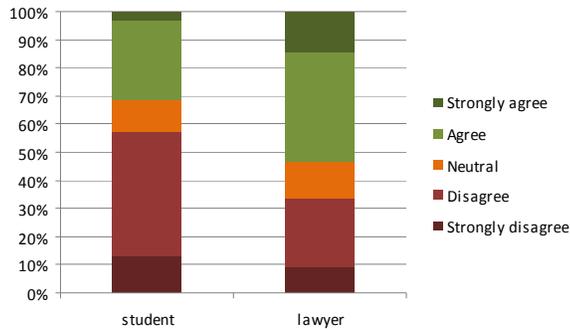
Knowing how to become a barrister:

The numbers of students and lawyers who reported that they knew how to become a barrister are reported in the table and figure below.

I know how to become a barrister	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
student	59	201	51	128	15
lawyer	7	19	10	30	11

Table 2 and Figure 13: Responses to the statement, “I know how to become a barrister.”

45 A note on statistics used. The only continuous measure from the survey is the belongingness score obtained from summing the five separate belongingness questions. The remainder of the questions provide categorical data. Some variables are nominal type categorical data (e.g., type of high school attended: private, public, other) and other variables are ordinal type categorical data (e.g., “I would like to become a barrister”: Strongly disagree, Disagree, Neutral, Agree, Strongly Agree). The most appropriate non-parametric inferential test statistic nominal data is chi-square (χ^2), and for ordinal data the Mann Whitney test (U) is appropriate (Field, 2009; Gravetter & Wallnau, 2007). There are also some standard t-tests and ANOVA reported for some of the analyses concerning the overall belongingness measure.



Does gender make a difference?

As the majority of the literature refers to the different experiences of men and women in the legal profession and at the bar, we decided to conduct the first set of analyses by breaking the data down data by gender.

a. Gender ratio

The sample size for the student, professional and barrister surveys were 456, 75, and 43 respectively. As can be seen in figure 1, females are the majority gender at university (60%) but are the minority in professional positions (39%) and are a smaller minority as barristers (32%). *Note that these numbers reflect participation for the surveys rather than an absolute gender ratio that exists for each type of group surveyed.*

b. Age of respondents

There was no significant difference found between the age profiles for females (Mdn = 20s) and males (Mdn = 20s) for the student survey (see figure 14). For the professional survey the age profile was significantly younger for females (Mdn = 30s) compared to males (Mdn = 40s), $U = 424$, $z = -2.66$, $p < .05$, $r = -.26$ (see figure 15). There was no significant difference found between the age profiles for females (Mdn = 40s) and males (Mdn = 40s) for the barrister survey (see figure 16). However it may be worth noting that whilst a third of the male barrister respondents are in their 30s or younger, there are no female respondents younger than 40.

Figure 14: Age profiles for students by gender

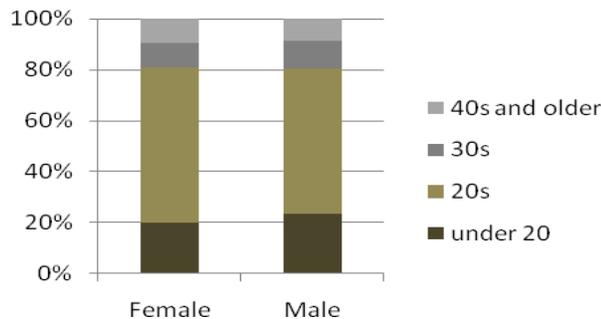


Figure 15: Age profiles for lawyers by gender

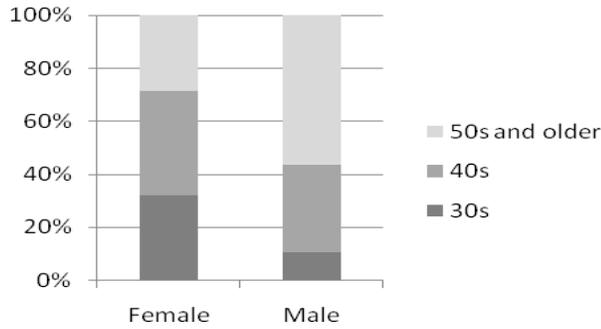
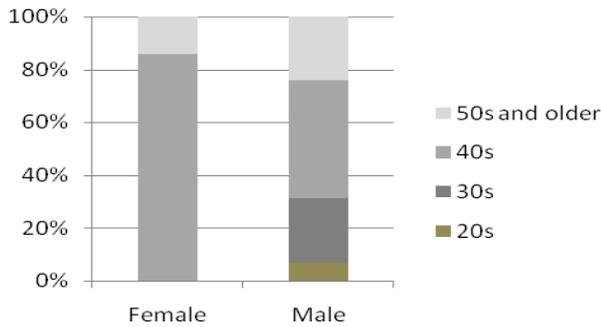


Figure 16 Age profiles for barristers by gender



c. Length of time as a student/lawyer/barrister

For the student survey there was no significant difference found between the female (Mdn = 3 years) and male (Mdn = 3 years) groups for the number of years spent at university, $U = 23896$, $z = -.67$, $p = .5$, see figure 17. For the professional survey a significant difference between females (Mdn = 6 to 10 years) and males (Mdn = over 10 years) was found, $U = 451.5$, $p < .05$, see figure 18. No significant difference was found between females and males for the barrister data (Mdn for both groups = 3 to 5 years, $p > .05$), see figure 19.

Figure 17: The length of time spent (in years) as a law student by gender

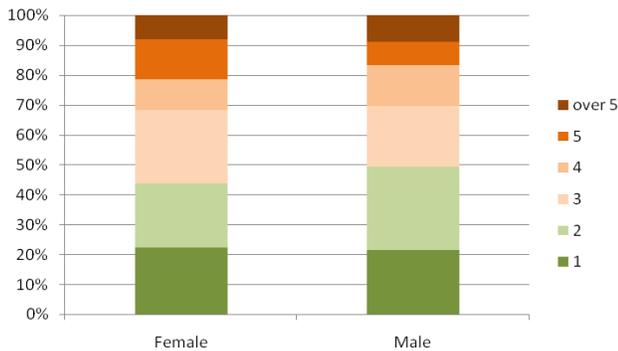


Figure 18: The length of time spent (in years) as a lawyer by gender

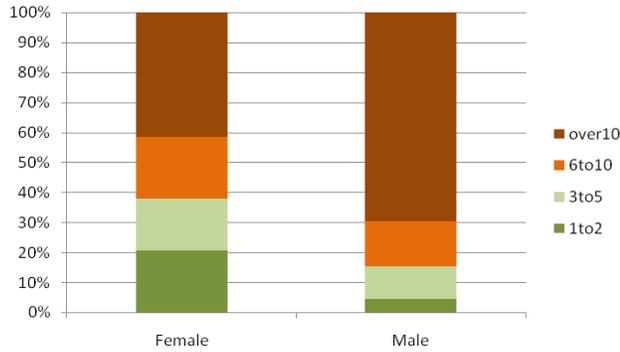
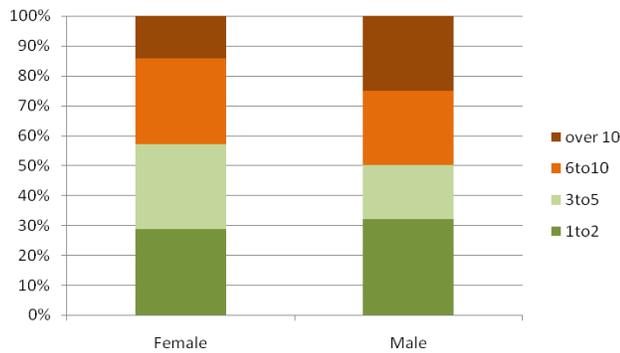


Figure 19: The length of time spent (in years) as a barrister by gender



d. Type of high school

For the student survey, no significant difference was found between genders for type of high school attended. For students the slight majority for both females and males is from a private high school background (53% and 54% respectively), see figure 20. A significant difference exists between females and males for the professional survey, $\chi^2(1, n = 74) = 4.59, p < .05$. A majority of professional female respondents (66%) attended a private high school compared to a minority of professional male respondents (40%), see figure 21. The opposite pattern exists for the barrister respondents, as the majority of male (71%) respondents attended a private high school compared to a minority of female respondents (21%), $\chi^2(1, n = 38) = 7.17, p < .05$, see figure 22.

Figure 20: The type of high school students attended by gender

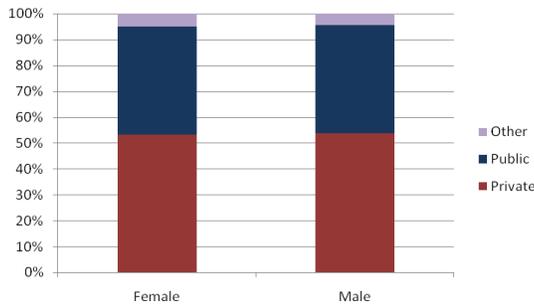


Figure 21: The type of high school lawyers attended by gender

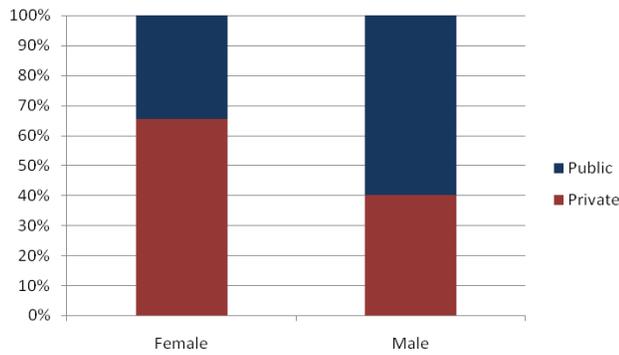
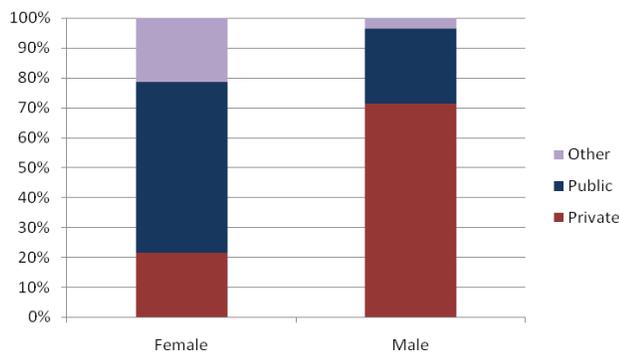


Figure 22: The type of high school barristers attended by gender



e. Marital status

There are no differences between males and females for each of the three surveyed groups, see figures 23-25. However there was a significant difference found across the three surveyed groups overall, with barristers having the highest proportion of married respondents (72%), followed by professionals (63%), then students (15%), $\chi^2(4, n = 570) = 152.34, p < .05$.

Figure 23: Marital status of students by gender

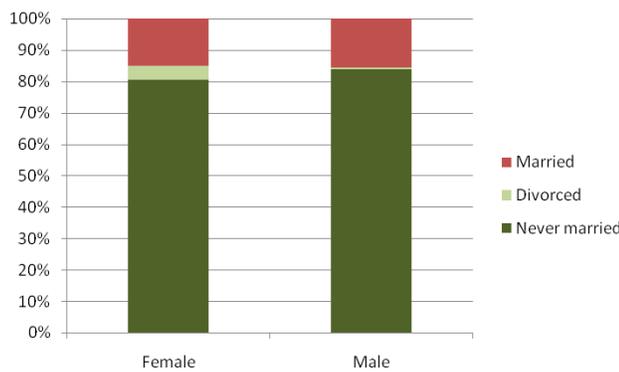


Figure 24: Marital status of lawyers by gender

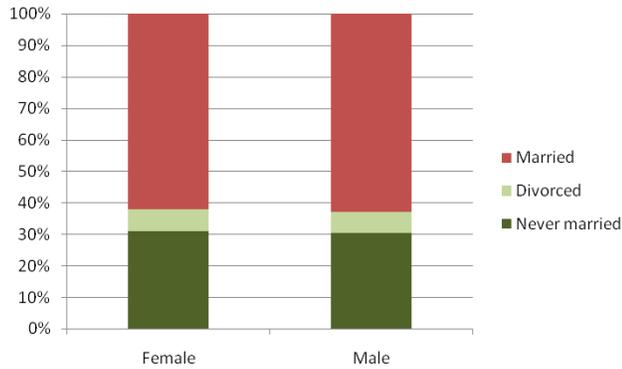
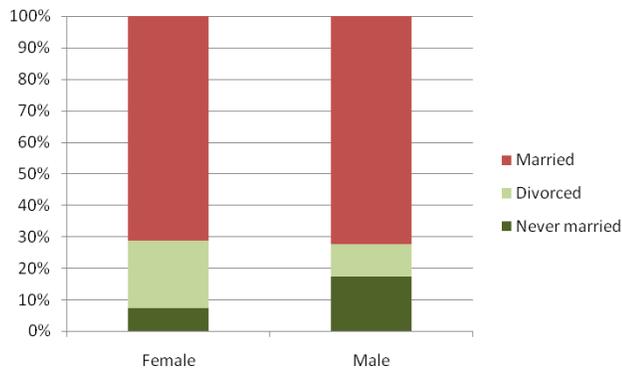


Figure 25: Marital status of barristers by gender



f. Number of children

For the professional respondents, there exists a trend in the data that females report having less children (Mdn = 0 children) than males (Mdn = 1 child), see figure 26. However this difference *just* misses out on reaching statistical significance, $U = 483.5, z = -1.93, p = .054$. For barrister respondents, there was also a trend in the data for females to report having less children (Mdn = 0) than males (Mdn = 2). However this difference also *just* misses out on reaching statistical significance, $U = 132.5, z = -1.89, p = .06$. Another thing to note about this data is that whilst around 50% of both female professionals and barristers reported having no children, for males approximately 40% of professionals reported having no children whilst approximately only 20% of male barristers reported having no children.

Figure 26: Number of children for lawyers by gender

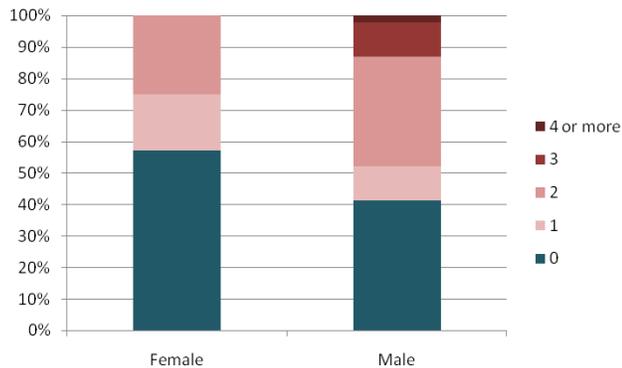
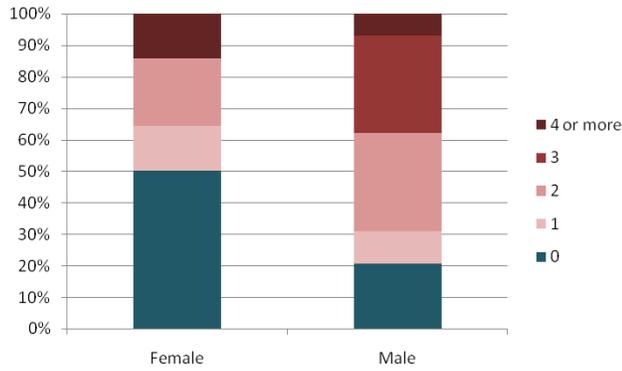


Figure 27: Number of children for barristers by gender



g. Law school attended

UWA law school graduates make up the largest proportion of respondents for all three surveys, see figures 28-30.

Figure 28: Law School for students by gender

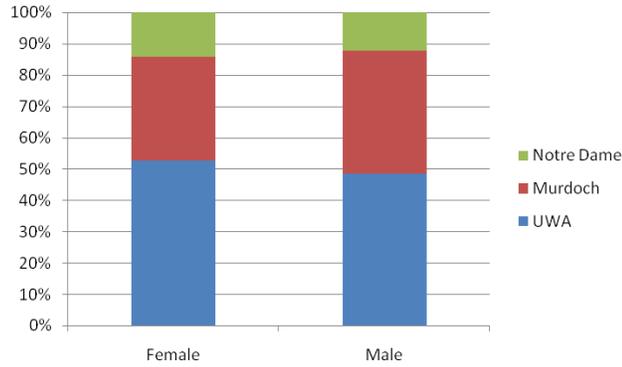


Figure 29: Law School for professionals by gender

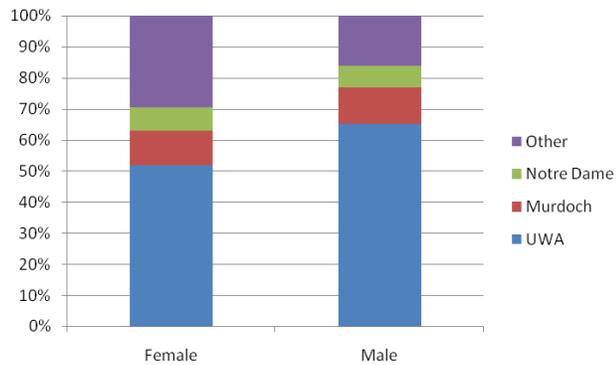
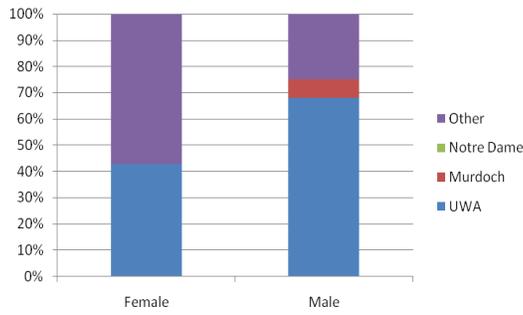


Figure 30: Law School for barristers by gender



h. Ethnicity

Anglo-Australian ethnicity dominates the proportion of respondents for all three surveys, see figures 31-33.

Figure 31: Ethnicity for students by gender

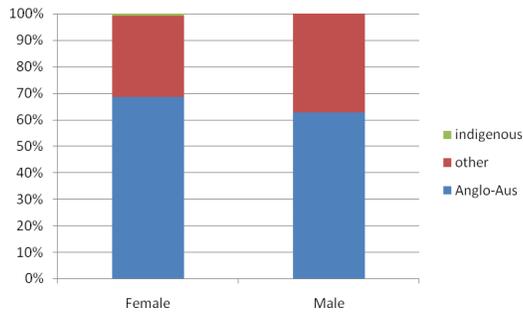


Figure 32: Ethnicity for professionals by gender

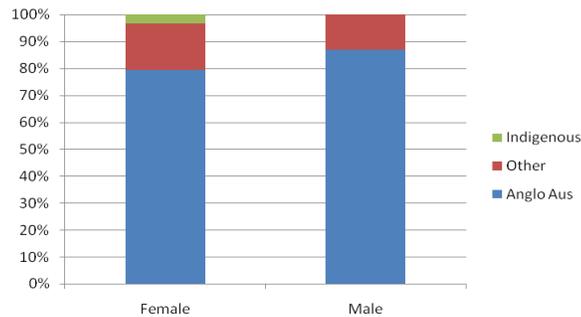
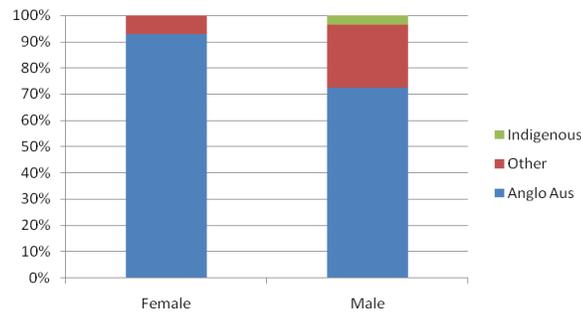


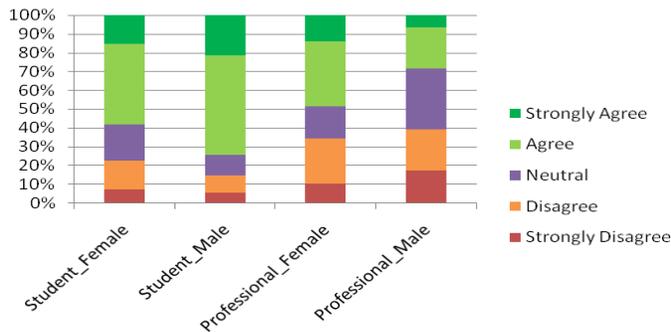
Figure 33: Ethnicity by barristers by gender



i. Wanting to become a barrister

For the student survey there was a significant difference found between females and males in their desire to become a barrister, $U = 20740, z = -3.2, p < .05$. Whilst the median score for both males and females was 'Agree', there was a higher proportion of male students whom agreed or strongly agreed (74%) that they would like to become a barrister compared to female students (58%), see figure 34. The opposite trend is evident for the professional survey respondents, with a lower proportion of male professionals reporting that they agreed or strongly agreed that they would like to become a barrister (28%) when compared with female professionals (48%), see figure 34. However this difference was not statistically significant, $U = 545.5, z = -1.36, p = .17$.

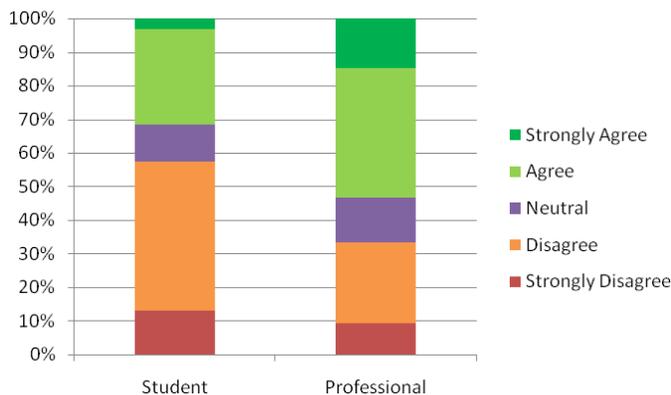
Figure 34: Wanting to become a barrister for students and professionals by gender



j. Perceived knowledge about how to become a barrister

There was no significant difference found between males and females for their reported perceived knowledge about how to become a barrister for both the student and professional surveys (both Mann-whitney tests, $p > .05$), see figure 35. Overall, professionals (Mdn = Agree) reported a significantly higher level of agreement with the questionnaire item regarding perceived knowledge about how to become a barrister compared to university students (Mdn = Disagree), $U = 12331, z = -4.04, p < .001$.

Figure 35: Knowledge about how to become a barrister for students and professionals



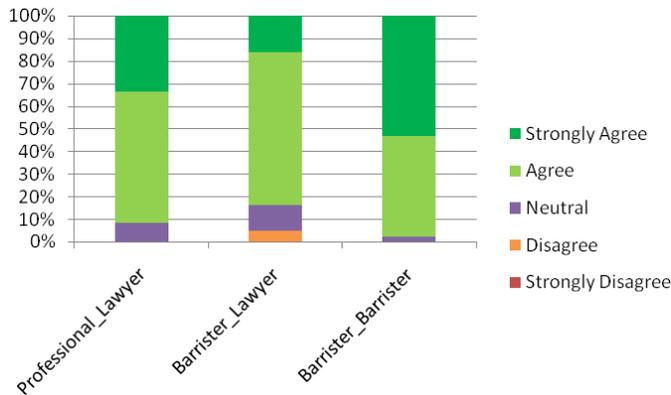
k. Enjoyment being a lawyer/barrister

For this section there were no differences between genders for any of the questions, so analysis between professionals and barristers was collapsed across genders. Professionals were asked to state whether they agreed or disagreed with the statement "I have enjoyed being a lawyer", see figure 36. Barristers were asked to state whether they agreed or disagreed with the statement "I

enjoyed being a lawyer”, and also “I enjoy being a barrister”, see figure 36. Overall, both barristers and professionals reported a high level of enjoyment for their career with virtually all respondents agreeing or strongly agreeing with the statement that they enjoy their career. However barristers reported more enjoyment with being a barrister (53% strongly agree) than the professionals did with being professional lawyers (34% strongly agree), $\chi^2(1, n = 117) = 4.36, p < .05$.

There was also a significant difference found between barristers and professionals in relation to their enjoyment at being a lawyer. Professionals reported enjoyment at being a lawyer (34% strongly agree) more than what barristers reported their enjoyment when working as a lawyer (16% strongly agree), $\chi^2(1, n = 117) = 4.19, p < .05$.

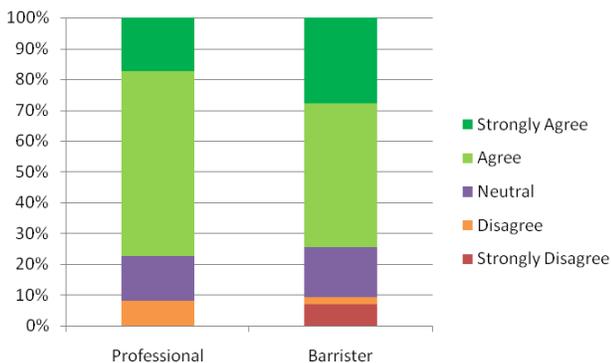
Figure 36: Enjoyment for barristers and professionals



I. I enjoyed law school

For the statement “I enjoyed law school” there were no differences found between genders for either professionals or barristers, so the analyses between professionals and barristers were collapsed across genders. There was found to be no significant difference between professionals (Mdn = Agree) and barristers (Mdn = Agree) for their reported enjoyment of law school, $U = 1529.5, z = -.51, p = .61$. The vast majority of both professionals (77%) and barristers (74%) reported ‘agree’ or ‘strongly agree’ in response to the statement “I enjoyed law school”, see figure 37.

Figure 37: Enjoyment of law school

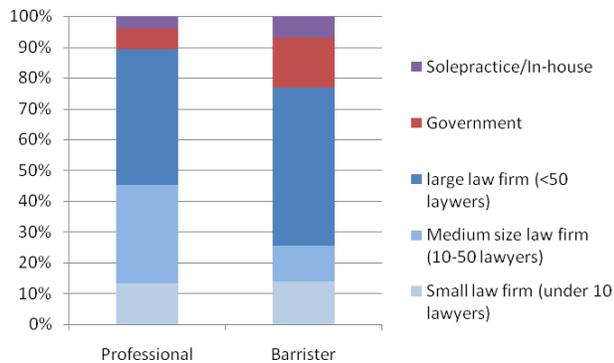


m. Type of law firm worked in

Chi-square tests comparing across gender were non-significant for both the professional and barrister surveys. Comparing across professionals and barristers there was a noticeable but slight difference between barrister and professional respondents working for larger organisations as lawyers. 51% of the barristers reported having previously worked at a large law firm and 16% in

government before becoming a barrister. Compared to professional respondents, 44% reported working in a large law firm and 7% working in government. Again, this small difference *just* misses out on statistical significance, $\chi^2(3, n = 112) = 7.45, p = .06$, see figure 38.

Figure 38: Type of law firm



Does a sense of belonging make a difference?

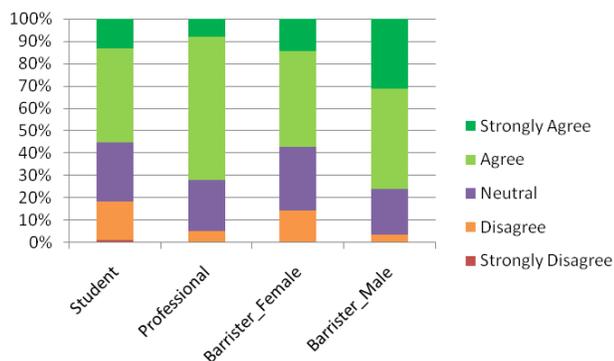
As the authors thought that a sense of ‘fit’ or ‘belonging’ to the law school, legal profession or to bar would also be important in identifying the different experiences of men and women, the next series of analyses focus on the effect of the participants’ sense of belonging with desire to be a barrister, or knowledge of how to become a barrister.⁴⁶

Please note, for the following charts, responses to the barrister survey are presented separated by gender, while the student and professional data is presented as a whole. This is because only the barrister survey has any difference of note between genders for the belongingness statements.

a. Response to the statement “I have felt as if I belong”

No significant differences between genders for all three surveys, see figure 39. However, note there was a trend for female barristers to agree less with this statement compared to male barristers.

Figure 39: Responses to the statement “I have felt as if I belong” for the student, professional and barrister surveys.

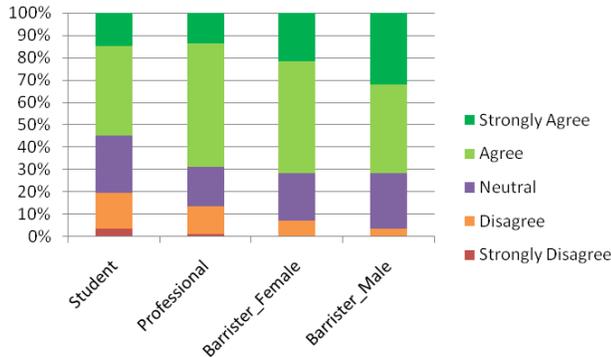


⁴⁶ The first two statements are positively worded (“I have felt as if I belong” and “I have made friends easily”) while the remaining three statements are negatively worded (“I have felt like an outsider”, “I have felt awkward and out of place” and “I have felt lonely”). An overall belongingness variable was created by summing the five different belongingness variables together, after reverse scoring the negatively worded statements. This variable has a potential minimum score of 5, and a potential maximum of 25, where the higher the score, the higher the belongingness. Analysis of this variable is presented in figures 44 & 45.

b. Response to the statement “I have made friends easily”

There were no significant differences found between genders for all three surveys for the statement “I have made friends easily”, see figure 40.

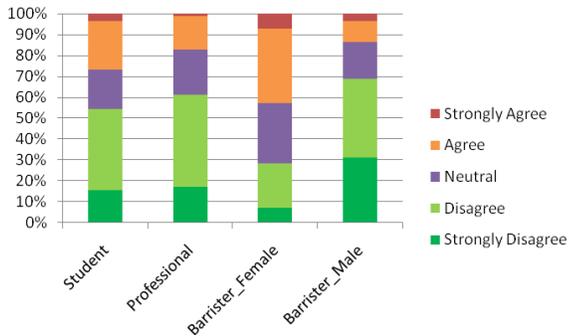
Figure 40: Responses to the statement “I have made friends easily” for the student, professional and barrister surveys.



c. “I have felt like an outsider”

There were no significant differences found between genders for student and professional surveys, but there was a significant difference found between females (Mdn = Neutral) and males (Mdn = Disagree) for the barrister survey, $U = 107, z = -2.57, p < .05$, see figure 41. Female barristers tended to report feeling like an outsider more than male barristers did.

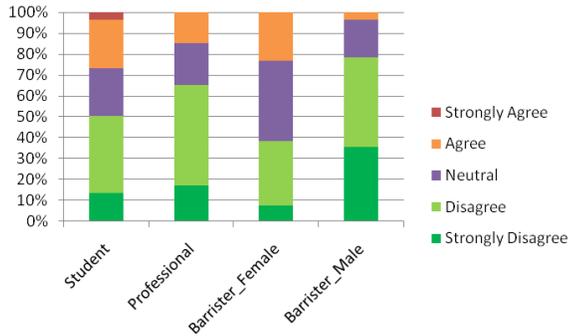
Figure 41: Responses to the statement “I have made friends easily” for the student, professional and barrister surveys.



d. “I have felt awkward and out of place”

There were no significant differences found between genders for student and professional surveys. However there was a significant difference between females (Mdn = Neutral) and males (Mdn = Disagree) for the barrister survey, $U = 155.5, z = -2.71, p < .05$. Female barristers tended to report feeling more awkward and out of place than the male barristers did.

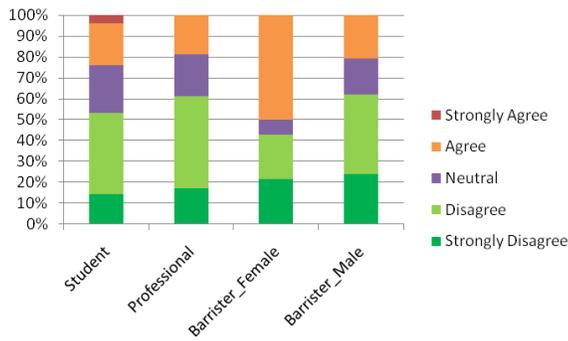
Figure 42: Responses to the statement “I have felt awkward and out of place” for the student, professional and barrister surveys



e. “I have felt lonely”

There were no significant differences found between genders for all surveys. However, note there was a trend for female barristers to agree more with this statement compared to male barristers.

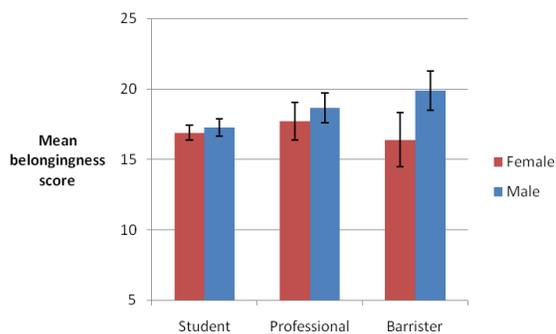
Figure 43: Responses to the statement “I have felt lonely” for the student, professional and barrister surveys.



f. Belongingness

On the ‘belongingness’ scale, there were no significant differences found between genders for the student survey, $t(443) = .88, p = .38$, or the professional survey, $t(72) = 1.06, p = .29$, see figure 44. However, male barristers reported significantly higher belongingness than female barristers did, $t(38) = 2.89, p < .05, d = .98$, see figure 44. Previous analyses show that this difference between female and male sense of belongingness to the barrister community was due to female barristers overall reporting a higher level of feeling out of place, and like an outsider.

Figure 44: The mean ‘belongingness’ score for the three surveys with each gender presented separately. Bars represent 95% confidence intervals.



What variables are able to predict the response to the question: “I would like to become a barrister”?

a. Correlations

The next set of analyses were conducted to establish what variables were able to predict desire to become a barrister. First, there were significant correlations found between wanting to become barrister... with:

For students

- Knowledge of how to become barrister (.13)
- Gender (.14)
- Years at law school (-.11)
- NOT feeling awkward and out of place at law school (.10)
- Feeling a sense of belongingness at law school (.13)⁴⁷

For lawyers

- Age (-.42)
- Type of law firm (-.24)
- Children (-.27)
- Years in the legal profession (-.39)
- Loneliness in the profession (-.25)

b. Multiple regression

To obtain a clearer picture of which of these particular variables influenced the desire to become a barrister the most, we conducted multiple regression analysis on the data. Multiple regression is an extension of bi-variate correlation and it allows the analyst to determine which of the independent (predictor) variables (in this case, the variables above) are the most directly related to (would be the better predictors) of the dependent (criterion) variable (in this case ‘wanting to become a barrister’). Regression analysis removes the combined influence of two variables that are highly correlated with one another and shows the independent contribution of each independent variable in correlating with (or predicting) the dependent variable.

For students

For the student participants the multiple regression was relatively weak as taken together these predictor variables predicted only 6% of the variance for the outcome variable ‘desire to become a barrister’, $R^2 = .06$, $F(5,439) = 5.29$, $p < .001$. In terms of the specific variables that influenced this desire, all of the predictor variables made a relatively equal but *very small* contribution.

- Gender ($b = .13$, $p < .01$) *Males slightly more likely to want to be a barrister
- Knowledge ($b = .11$, $p < .05$) *More knowledge how to become one associated with desire to be barrister.
- School years ($b = -.1$, $p < .05$) *More school years... slightly less likely to want to be barrister

47 Note1: These are all very small correlations and arguably are only statistically significant due to the very large sample size. *Note2: Because belongingness and awkwardness correlate relatively strongly ($r = .6$), the two variables were combined to provide a belonging_awkwardness score which correlates with desire to become a barrister ($r = .10$).

- Belong_awkwardness (b = .09, p < .05) *More belongingness to school, slightly more likely want to be barrister.

For lawyers

For the lawyer participants the multiple regression was stronger as taken together these predictor variables predicted 20% of the variance for the outcome variable 'desire to become a barrister', $R^2 = .20$, $F(5,73) = 3.80$, $p < .01$. Again, in terms of the specific variables that influenced this desire, no single predictor made a significant contribution individually but the issues noted below, together, were significant:

- Age * younger lawyers more likely to want to be a barrister
- Law firm * those who worked in government or a small or medium law firm, more likely to want to be a barrister than those who worked in a large law firm
- Number of children * the fewer children the more likely to want to be a barrister
- Years in the profession * the fewer years that they had been practicing law, the more likely to want to be a barrister
- Loneliness * the less lonely they felt in the profession, the more likely to want to be a barrister.

What variables are able to predict the response to the question: "I know how to become a barrister"?

a. Correlations

For students

- Wanting to become a barrister (.13)
- Age (.15)
- High-school attended (-.11)
- Law school attending (.28)
- Feeling a sense of belongingness at law school (.26)

For lawyers

- Feeling a sense of belongingness in the legal profession (.28)

b. Multiple regression

For the student participants the multiple regression was moderate as taken together the predictor variables predicted 15% of the variance for the outcome variable 'I know how to become a barrister', $R^2 = .15$, $F(5,435) = 15.15$, $p < .001$. In terms of the specific variables that influenced this desire, all of the predictor variables, except age, made a relatively equal and significant contribution.

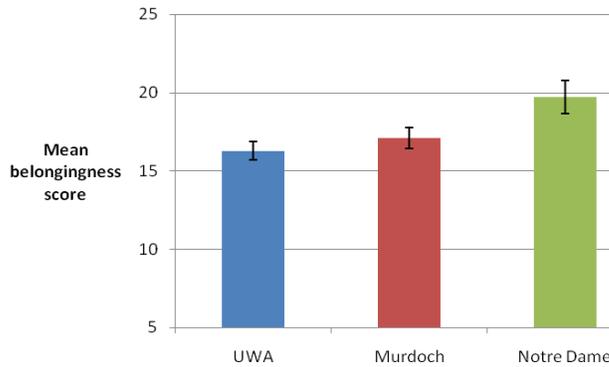
- Wanting to become a barrister (b = .11, p < .05) *The more that the student wanted to be a barrister, the more knowledge the student had of becoming a barrister
- High School attended (b = -.10, p < .05) * Students from a private school had more knowledge of how to become a barrister.
- Law School (b = .22, p < .001) * Students from Murdoch or Notre Dame knew more about how to become a barrister than students from UWA (see below).
- Feeling a sense of belonging (b = .19, p < .001) *More belongingness to school, more likely to know how to become a barrister.

A couple of extra findings...

a. Differences in reported belongingness for UWA, Murdoch and Notre Dame students

Student survey respondents were classified based on their law school and belongingness scores for each university are presented in figure 45. A one-way independent ANOVA revealed a significant difference for belongingness between the three universities, $F(2,440) = 15.27, p < .001, \eta_p^2 = .07$. Follow up t tests revealed that there were no significant differences between UWA and Murdoch students ($t(383) = 1.86, p = .06$) in sense of belonging. However, Notre Dame students reported a significantly higher sense of belonging compared to both Murdoch ($t(216) = 4.08, p < .001, d = .63$) and UWA ($t(281) = 5.52, p < .001, d = .82$).

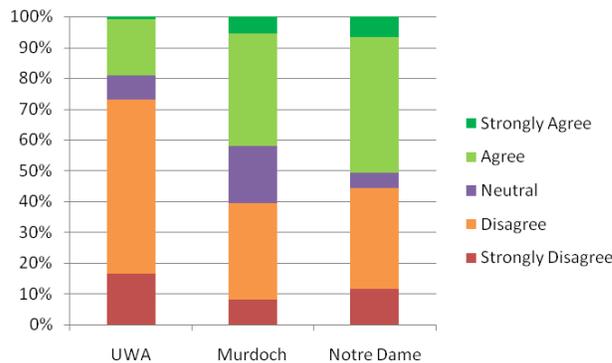
Figure 45: Mean belongingness scores for each university taken from the student survey.



b. Differences in reported knowledge about how to become a barrister for UWA, Murdoch and Notre Dame

Kruskal Wallis tests revealed that there was no significant difference found between students from different law schools in reported *desire to become a barrister* ($\chi^2(2, n = 454) = 3.33, p = .18$). However there was a significant difference found between students from different law schools in reported *knowledge about how to become a barrister* ($\chi^2(2, n = 452) = 43.38, p < .001$). Follow up Mann Whitney rank sum tests qualified that no difference existed between Murdoch and Notre Dame students ($U = 4865, z = -.18, p = .85$). However both Murdoch ($U = 12137.5, z = -6.21, p < .001$) and Notre Dame students ($U = 4784, z = -4.11, p < .001$) agreed more with the statement “I know how to become a barrister” than UWA students did, see figure 46.

Figure 46: From the student survey, responses to the statement “I know how to become a barrister” separated by university attended.



Some other noteworthy correlations....⁴⁸

Student survey

- Belongingness is significantly positively related to responses to the statement “I know how to become a barrister”, $r = .25$. Therefore, law students whom report more belongingness to their law school also tend to report more knowledge about how to become a barrister.

Professional survey

- Age of respondent is significantly negatively correlated with responses to the question “I would like to become a barrister”, $r = -.38$. This relationship suggests that older professional lawyers are less inclined to report having a desire to become a barrister.
- Age of respondent is related to overall belongingness, $r = .29$. This relationship suggests that older respondents feel more belongingness to the law profession.
- Reported agreement with the statement “I would like to become a barrister” is significantly negatively related to length of time reported practicing in the law profession ($r = -.37$), and reported number of children ($r = -.26$), and with age which was stated earlier ($r = -.38$). Therefore, desire to become a barrister is stronger for professionals whom are younger, have been in the profession for less time, and with none/few children.
- Reported agreement with the statement “I enjoy being a lawyer” is significantly positively related to reported enjoyment of law school ($r = .25$) and belongingness to the law profession ($r = .32$). Therefore, professionals whom report enjoy being a lawyer also tend to have enjoyed law school and feel a sense of belongingness to the law profession.
- Belongingness is significantly related to: “I know how to become a barrister” ($r = .32$), “I enjoy being a lawyer” ($r = .32$), “I enjoyed law school” ($r = .52$), Number of children ($r = .28$), time spent working in the law profession ($r = .37$). Therefore, professional lawyers whom report more belongingness to the law profession also tend to report more enjoyment being a lawyer, more enjoyable experience of law school, more knowledge about how to become a barrister, have spent more time working in the law profession, and tend to have more children.

Barrister survey⁴⁹

- Reported enjoyment when working as a lawyer is significantly positively related to reported enjoyment of law school ($r = .36$), and associated with marital status ($r = .31$). The relationship between reported enjoyment when working as a lawyer and belongingness to barrister profession is close to being significant ($r = .3$, $p = .06$).
- Note that there exists no significant correlations between the item ‘enjoyment being a barrister’ with any other variable... however there is a non-significant relationship with reported enjoyment when working as a lawyer ($r = .26$) and belongingness to the barrister profession ($r = .23$).
- The only significant correlation for reported belongingness to the barrister profession is with gender ($r = .42$). This relationship is explored in more detail earlier in this report, see figures 39-44. There are non-significant relationships between belongingness and ‘enjoyment of law school’ ($r = .27$, $p = .1$), ‘enjoyment being a barrister’ ($r = .23$, $p = .15$),

⁴⁸ *Please note: r refers to ‘Spearman correlation coefficient’ since the relationships being explored are for ordinal data.

⁴⁹ Because of smaller sample size of 43 it is more difficult to obtain significant relationships in this sample.

'enjoyment when previously working as a lawyer' ($r = .3, p = .06$), and the law school attended ($r = -.27, p = .1$). The final relationship with law school attended suggests that UWA graduates feel more belongingness as barristers. However, this is a non-significant relationship and should be interpreted with caution.

3.3 Qualitative data

There was an abundance of qualitative data, therefore we have categorised it according to the type of responses received. Below, we outline the number of responses which fit into general categories we have identified in relation to the questions. Additionally, we have included some examples of the types of responses in each category and the particularly nuanced answers.

The responses were to the open-ended questions:

Students:	Please tell us what, if any, barriers you see to becoming a barrister
Lawyers:	Please tell us what, if any, barriers you see to becoming a barrister What else would you like to say about the legal profession or becoming a barrister?
Barristers:	Please tell us what, if any, barriers you experienced in becoming a barrister Please tell us what, if any, challenges you experience being a barrister

Barriers to becoming a barrister

Students' perceptions

Categories

Students perceived the following broad categories of 'barriers' to practice as a barrister⁵⁰:

- Grades (12.7%)
- Lack of Knowledge about being a barrister (12.2%)
- Age (12%)
- Gender (11.5%)
- Lack of Confidence in own ability (9.8%)
- Lack of connections (8.1%)
- Financial matters (5.3%)
- Lack of Advocacy Experience (4.9%)
- Family Commitments (4.5%)
- Racial/Cultural Background (3.2%)

Examples of answers

- *Lack of legal training or information given during Law School about becoming a barrister.*
- *Don't exactly know what it [barrister] is as opposed to a solicitor/ lawyer etc.*

50 Numbers indicate the percentage of respondents who identified this category as a barrier, out of those who gave a qualitative response only. The data for gender among student respondents has been weighted to approximate responses from women who gave a qualitative response only. All other data is unweighted.

- *Gender inequality at the bar, limits to practical experience early in career development, limited exposure to the bar when working in a private commercial law firm.*
- *It seems to be a largely male-dominated section of the legal profession*
- *Age - I am 48 years old.*
- *I am currently looking for a job and it seems very hard to find one without having private school ties or friends and family in the legal profession who can assist; so I don't even want to think about progressing my career to become a barrister!*
- *Work/life balance (I have young children) and also that one must have a client list before becoming a barrister. I also hear that one must be prepared to have no income for about a year while the client base builds up.*
- *My grades, my performance in law exams.*
- *Are my grades high enough? Will my place of employment give me court experience? Without moot experience will I even be considered?*
- *Information availability*
- *Competition, difficulty to break-in*
- *Tight competition for article positions. Also have a foreign accent*
- *Being a mother of young children.*
- *You need to be an exceptionally good public speaker.*
- *My communication skills, how to use the right words at the right times.*
- *The bar exam, and besides that having absolutely no idea how to become one - the general feeling about it is that it is difficult, however.*

Professions' perceptions

Categories

Practising lawyers perceived the following broad categories of 'barriers' to practice as a barrister:

- Financial matters (37.9%)
- Lack of Advocacy Experience (20.6%)
- Lack of connections (15.5%)
- Gender (6.8%)
- Lack of Confidence in own ability (6.8%)
- Family Commitments (5.1%)
- 'Culture' of the Bar (5.1%)
- Lack of Knowledge about being a barrister (1.7%)
- Age (1.7%)

Examples of answers

- *Existence of a single dominant chambers and saving enough money to establish practice*

- *I do not practise in litigation*
- *Gaining prior experience before the Courts*
- *Insufficient networks for referrals.*
- *Men are briefed much more than women.*
- *Possibility of financial insecurity.*
- *legal knowledge, referrals, overheads, time constraints, experience*
- *Don't understand the process. Not confident of generating sufficient work.*
- *At this stage, just experience*
- *Don't have enough capital to branch out alone; don't know how long it will be that I'll still require some sort of support on procedural / technical issues*
- *'closed-shop' mentality of chambers, - lack of guidance & mentors*
- *Male dominated, isolated way to work.*
- *None, other than perhaps the perception (whether or not it is true) that it somewhat of a closed club. nonetheless it would be worth persevering and breaking down any barriers as there is a need for good barristers in WA, and it is a shame to have to constantly brief eastern states counsel, when we have our own home grown talent*
- *Uncertainty of instructions and workflow. Lack of support. Perceived need to be "taken under the wing" of a well-known silk to really succeed.*
- *Age, loss of financial security*
- *Leaving behind a regular income, for uncertainty.*
- *Initial financial risk - earnings lag upon commencement - required network for referral of work*

Barristers' experience

The barristers reported experiencing the following 'barriers' to practice as a barrister. We have provided you with all the answers received, although where the answers were the same, for instance 'nil' or 'none' we have given the number of times this response was given.

No barriers

- *Nil/none x 12*
- *No barriers in becoming a barrister, I was well supported.*
- *None really. I had been a litigation partner in a large firm and the transition to the Bar was relatively easy at the time I did it.*
- *None, other than a concern (which i was to quickly find out was unfounded) that i would not be briefed.*

Financial

- *Finance - I was concerned if I had money to come to the bar where I would get work from x 8*
- *Income drop, and building up clients / fees on arrival*

- *It is a significant commercial and professional risk to change from being employed as a paid solicitor to having no guarantee of any income.*
- *Voluntary relinquishment of high fortnightly salary, when very limited family/partner financial backing available*

Contacts/ profile

- *Lack of contacts in the profession*
- *Some difficulties in getting work. Also, organising an appropriate table was very difficult.*
- *Obtaining clients of my own account rather than through a firm. Overcoming the entrenched views within the Western Australian profession that practitioners should go to the Bar young.*
- *A concern that I didn't have a high enough profile to attract work.*
- *Finding room in chambers.*

Information/experience/age

- *Informational vacuum*
- *Suggestions from senior litigation solicitors that more experience is needed (but compare Sydney, Melbourne and London), to deter junior practitioners from going to the bar.*
- *Absence of programs to teach court craft / procedure. Requirement to have substantial capital saved to go to the bar.*
- *Age - people thought I was too young when I started at 29.*

Administration/support

- *It took a longer period of time than for most for my application to be accepted, and I was required to provide further information to the Bar Association before elected as a member.*
- *There were quite a few administrative steps to undertake, which were time consuming and somewhat stressful at the time, but no substantive barriers.*
- *nothing obvious technical support, I guess, as I was not in the position to take on a secretary*

Fear

- *Fear of not being able to make a go of it. Knowing that there was no support or encouragement. People actively saying "where are you going to get your work from?" which is a serious issue for someone from government.*
- *The only barrier was the fear that I could not make a go of it. I spent 9 years in the amalgam. It did me no harm as I met a wide variety of contacts.*
- *the fear of becoming self-employed*
- *Self-confidence.*
- *Only my own worries*

- *The perennial doubt - will I get any work. Also I have practised as a solicitor and appeared in court but will my advocacy skills be good enough*

Reflections on the profession and the Bar

Lawyers

Again, we have provided you with all the answers received.

- *If success in work - i.e. promotions, that new job, becoming a barrister, etc, is really as correlated to social connections as some would have us believe, then it is going to be difficult, I think. Have felt more included in the legal profession the more I get involved.*
- *The profession is too conservative and one's individuality is not celebrated. There is no scope for genuine work/life balance. Most lawyers are superficial and some wholly dysfunctional, which makes it difficult to create or maintain genuine friendships. I wish I took up a trade.*
- *Its a wonderful profession- and I will not give up*
- *The WA Bar lacks the established junior scheme enjoyed in the other states, and the profession does not actively support junior lawyers joining. This means less opportunity to acquire advocacy at a top level from a junior stage, but also experienced lawyers joining without any advocacy experience.*
- *It is a punishing profession, and requires a great support system, or great insensitivity to others, to succeed*
- *Having a fused profession in WA complicates this issue greatly*
- *Very happy in the legal profession as a commercial lawyer. No interest in becoming a litigator, and hence not as barrister. Good luck with the study.*
- *Very difficult for younger practitioners who do not have the number of contacts that older practitioners have. So many lawyers now that it is hard to be noticed in the way necessary to receive briefs.*
- *It's a difficult profession (it's not for faint at heart). There are better/easier ways of making a living.*
- *There is no/no sufficient support for the existence of a junior bar - compare Sydney/Melbourne*
- *Ethics is a real issue. I have found too many lawyers are unethical and happily (and knowingly) mislead other practitioners or (even more so) the Court.*
- *There are easier ways to make a living.*
- *Billing practices should be changed.*
- *It would be very a very rewarding and logical extension to one's legal career, particularly if you like advocacy*
- *I would probably go to the bar if "invited" or encouraged by a senior barrister, possibly only one, to do so.*
- *Becoming a barrister appears to be the kind of avenue you would pursue once you have developed a high level of expertise in a particular area of law. It is not*

something I would consider to be an option for a young lawyer-it does not feel like an option I could pursue anytime soon in my career

- *My understanding is that the profession is highly hierarchical and junior barristers require the patronage of senior barristers to succeed.*
- *There is still an establishment clique, of which the Supreme Court and Law Society appear to be the base.*
- *WA is an easier place to become a Barrister than NSW*

Barristers

- *If you solve complex problems swiftly and thoroughly and have stamina, it is a very enjoyable profession*
- *It's not as tough as many jobs for making a living and you get paid better! Too many people think that it is the hardest work around.*
- *There are entrenched cliques at the WA Bar that wield highly disproportionate amounts of power.*
- *Presently, the three youngest barristers at chambers are, respectively, of Chinese extraction (1st/2nd Generation Australian), Indian extraction (New Zealander in Australia) and Greek (2nd/3rd generation Australian).*
- *It is the best way to practice law, because of the independence.*
- *The Bar is improving, but there is still a level of hostility towards minority groups.*
- *I like the independence and the focus on the law, rather than administering files. On the other hand I miss the collegiate environment of working in a firm and I dislike the lack of practical control over how a matter is run, which is in the hands of the solicitor.*
- *More support in the form of mentoring and senior members of the Bar is needed to make a very public show of supporting women both in briefing and at the firms who brief them. It is still all too often that decisions about briefing are done by men who brief another "good bloke" that they know.*
- *As to the last question, being a barrister is to a large extent a solitary occupation, in that you prepare largely by yourself, in the end you are the person who has to make the hard decisions, and you stand or fall on your own performance. So the bar can be lonely at times.*
- *It is very flexible and you are your own boss which is the best thing about it.*
- *I believe that it is the most fulfilling way of practising the law.*
- *It is a career that is rewarding but takes a lot of hard work. It's not a part-time career. It is also very competitive.*
- *I love being self employed*
- *it is a very attractive & rewarding way to practise*
- *It is the best way to practice law. When working for a firm it sometimes the budget that is more important than law, when working for an NGO or the Govt it sometimes seems policy and perception policy of policy application is more important than law. This creates unproductive tension.*

- *I'd recommend it*
- *It is one of the best kept secrets about being a lawyer. It is a sublime mode of practice which I would not leave without very good reason.*
- *Some people, in my experience all men, are quick to tell you bad things about yourself and your practice and rarely say out aloud the opposite. This game takes a lot of self-confidence and awareness.*
- *Being a barrister enabled me to be a sole parent.*
- *I enjoy the support of other barristers although it is something that I have found I must seek. It is an honour and a privilege to be a barrister.*
- *Very hard work, often terrifying when you don't know what to do and no mentors to help at the bar and responsibility for something very important to someone in your hands. Great satisfaction when it all works! The bar is 'dog eat dog' and no barristers (few exceptions) care about others.*
- *It is a substantially better method of carrying on practice compared to being a solicitor.*
- *You have asked some very interesting questions. One barrister I know who is hugely competent says she is convinced she was only granted her law degree as a result of a clerical error!*
- *The challenges of being at the bar are all positive in my experience and whilst I am glad I experienced a decade as a lawyer before making the transition, I am very pleased to have done so.*
- *The best way to practise law (for me)*
- *I enjoy working for myself, in particular being able to decide what work I take on, when and where I do it, and there is a direct relationship between the amount of work I do and how much I earn.*
- *It is a far better way to practice than being a partner in a large law firm*
- *its great fun - working for yourself is fantastic.*
- *Being a barrister has many advantages. By and large you are free of time recording and other administrative demands of a legal practice. You have a lot of independence and flexibility of time. Of course you need to be available to take a brief at short notice.*
- *Don't go to the bar in WA too junior*

4. Discussion

Limitations

Before discussing the results of the study, it is worth noting the limitations to the study. As discussed above, we chose to keep the study as open as possible and not focus on the experience of any particular 'cultural' group. This indirectly may have led to the study not identifying the experience of certain groups, perhaps, the gay, bisexual, lesbian and transgender communities, or particular religious groups. Further, the response rates were relatively low and those who already felt a sense of belonging to the law school or profession, or those who wanted to be barristers may have been more inclined to respond to the surveys. In any event,

and despite the limitations (which future research could address) the results present an interesting picture of 'diversity' at the bar. In summary, the results show the following:

Knowing how to become a barrister

It is clear that students are reasonable ignorant of the pathways to becoming a barrister. Only 28% of students reported that they 'agree' with the statement "I know how to become a barrister", while an even smaller percentage reported (3%) that they 'strongly agree' with the statement.

A reasonable number of lawyers also reported ignorance with knowing how to become a barrister. Only 53% of practicing lawyers reported agreeing or strongly agreeing with knowing how to become a barrister, with the others either neutral, or disagreed or strongly disagreed.

Other results that illuminate the issues surrounding knowing the pathways to becoming a barrister included the results that knowing how to become a barrister was strongly correlated with:

- having a sense of belonging to the law school or profession, and
- for students, they were more likely to know how to become a barrister if they:
 - wanted to become a barrister
 - attended a private school, or
 - attended Notre Dame or Murdoch (UWA students reported less knowledge of how to become a barrister).

In light of the literature that suggests that knowledge of how to become a barrister is not very widespread, these results are possibly not very surprising. What is perhaps of considerable interest is the emergence of a 'cultural' footprint emerging, whereby a sense of belonging is strongly correlated with knowledge of how to become a barrister.

Wanting to become a barrister

In terms of wanting to become a barrister, the majority of students (64%) reported that they did want to become a barrister (agreed or strongly agreed); while the majority of practicing lawyers (64%) reported being either neutral, or disagreeing or agreeing with the statement "I would like to become a barrister."

These results were further illuminated by the results that 'wanting to become a barrister' was strongly correlated with:

- for students, they were more likely to want to become a barrister:
 - if they had knowledge of how to become a barrister
 - if they were male
 - the fewer years that they had spent at law school, and
 - the greater their sense of belonging to the law school.
- For practicing lawyers, they were more likely to want to become a barrister:
 - the younger they were
 - If they worked in government or a small or medium law firm, compared to a large law firm

- the fewer children they had
- the fewer years that they had been practicing law, and
- the less lonely they felt in the profession.

It is not clear what is behind these observed relationships— it could simply be an artifact of the number of participants who responded to the study. However, again the relevance of the cultural aspects, including a sense of belonging, emerges an interesting feature of the desire to become a barrister, and as discussed below, an aspect that warrants further investigation.

Perceived barriers to becoming a barrister

Indeed, the multiple regressions for the above data showed that there were likely to be other variables, other than those identified by the quantitative analyses which were important for predicting a student’s and practitioner’s desire to become a barrister, and the qualitative responses give insight into what these variables might be. In particular, the qualitative data shows that the following **perceived** barriers to becoming a barrister are relevant.

- a lack of personal ability (especially communication skills)[students],
- difficulty/responsibility of the job (which may impact upon desired lifestyle),
- difficulty in obtaining further training,
- it takes too much time to achieve,
- a lack of ‘contacts’ needed to obtain a position,
- a ‘male-dominated’ profession

As noted above, students perceived the biggest barrier to their becoming a barrister was their grades. It is unclear precisely what the link between grades and practice at the bar is, though the responses seem to indicate that students perceive practice at the bar as an ‘elite’ and ‘competitive’ undertaking.

Lack of knowledge about how to become a barrister is the second most often reported barrier. Interestingly, the literature review suggests that better communication to women students about what practice at the bar is actually like – and presumably pathways to becoming a barrister – would assist in achieving gender equity. Our results partially support that finding, but also reject the picture offered by Travers, insofar as our data showed no significant difference between knowledge of how to become a barrister as between men and women students (fig. 35). Nevertheless, the data does suggest that better dissemination of information about how to become a barrister may well assist in combating the broader ‘cultural’ effect identified above, and to the extent that any cultural effect does exclude women’s equal participation, then the better dissemination of information will assist in resolving that disparity.

It is also interesting that 11.5% of women who gave a qualitative response *volunteered* that their gender was a barrier to their practice as a barrister. If nothing else this suggests that the perception that there is some gender bias has some traction among women students. Whether or not the existing legal culture is discriminatory in this way, we need to address this perception, lest it become a self-fulfilling prophecy.

In summary, increased support and education for students who wish to practice at the bar would assist in a number of key areas identified particularly lack of knowledge about becoming a barrister and a lack of connections.

Experienced barriers to becoming a barrister

The above section summarises the perceived barriers to becoming a barrister. In terms of the barriers that the barristers reported experiencing, the qualitative results revealed that a significant barrier to becoming a barrister was a financial one. Many of the barristers reported that finances were a perceived or experienced barrier to becoming a barrister. While the nature of work at the independent bar is such that income is not guaranteed, it is concerning to think that many see finances as a barrier. The natural consequence of this is that the bar will self-select for those applicants for whom finances are – for whatever reason – of less concern. Again, this leads us back to the issue of a legal ‘culture’, which is reinforced by the structure of the profession.

Further, many of respondents identified that a lack of advocacy experience was a barrier to practice at the bar. Indeed, one respondent noted that the structure of practice as a solicitor was such that one might come to the bar from a very senior position, with a great deal of experience in a certain area of law, but with no advocacy experience generally. Interestingly, far more practitioners than students identified a lack of advocacy experience as a barrier to becoming a barrister. Ways in which to develop advocacy experience before commencing practice at the bar is an area to which we should give some thought.

Finally, the practitioners identified a lack of contacts as a barrier to commencing practice at the bar. Again, this issue speaks to the ‘culture’ at the bar. Unless practitioners are given the capacity to develop contacts before taking up practice at the bar, the bar will self-select for those who already have those contacts, regardless of whether the need for contacts is a real or imagined barrier.

Culture

In terms of the type of culture that students, lawyers and barristers perceive exists, or does exist, in the legal profession and at the bar, the following results were notable.

Gender and private school education

In terms of gender and private school education, the results show that there is an even mix of males and females from public and private schools at law school but over the years, things seem to change. In the profession, there were more females from private schools and males from public schools. At barrister level, men who have come from private school backgrounds dominated the population. Again, this result might have been an artifact from the types of students, lawyers and barristers who responded to the survey, but nevertheless, it is a result that warrants further investigation.

Gender, age, children and years in the profession

The results also show some gender differences with regard to age, having children and the number of years that lawyers stay in the profession. First, there is a high proportion of female lawyers and barristers who don’t have children (around 50%) and whilst this is similar for male professionals, it is not the case for male barristers. Perhaps female barristers are not afforded the luxury of having children whilst maintaining their career to the same extent as male barristers are, or that woman who become barristers hold off having children. Second, it appears that men stay in the legal profession longer, which may or may not indicate that women seem to leave the profession for family commitments and then tend not to return. Further, it appears that men tend to go to the bar at a younger age than women do, which perhaps reflects that there are greater opportunities available for younger male lawyers to become barristers, than for women.

These explanations are conjecture only and require further investigation. However, the picture that does emerge from these results seems to be that there is a different profile of the male and female populations at the bar.

Belongingness

In terms of having a sense of belonging to the particular cultures that exist in the profession or at the bar, the results reflect that those who are now practicing barristers were not entirely satisfied with being a lawyer (in comparison to their peers). The data collected did not allow for a deeper analysis of why this might be so. However, although it seems to be an unsurprising result that people who enjoy law school carry on with it as a profession, it is still a result that merits further investigation.

Further, notwithstanding a lack of good data in relation to the status of gay, bisexual, lesbian and transgender people, the authors note that no respondent identified their sexuality as a perceived barrier to legal practice. However, insofar as their data supports the conclusion that 'sense of belongingness' broadly is a good predictor of knowledge of how to become a barrister and desire to be one, we might reasonably extrapolate that the extent to which gay, bisexual, lesbian and transgender people feel like they do not 'belong' in the legal profession, they will suffer the same barriers to participation in the legal profession as others.

Law School

Perhaps, the influence of the Law School is relevant to many of the findings above. Notre Dame students reported a greater sense of belonging than both Murdoch and UWA students reported and this would be worth investigating further. This is particularly so in light of the finding that the law school experience appears to impact upon professional belongingness (see the correlations section on page 36). It is possible that this finding is due to the emphasis that Notre Dame places on small class learning and the less competitive nature of its entry requirements. However, specifically why this is the case is an interesting area of investigation, as it may be that the particular 'cultures' experienced at the bar, begin as early as Law School (or even earlier, in high school).

5. Future

The results produce a good argument for the need for more data on the experience of different genders and 'culture' within the law profession. We still know very little about the particular culture or cultures within the legal profession and at the bar, and therefore we do not know if 'culture change' is required. However, as Knott et al propose, if we want to inspire cultural change, then we need to:

1. Identify and understand the experience of the target populations
2. develop a detailed map of what motivates the different segments of the populations
3. examine the path to the particular behavioural change for each of these populations, and
4. then explore what appropriate behavioural, educative, or policy interventions are required, based on the behavioural path built up for each population.⁵¹

⁵¹ Howieson, J (2011) 'The Professional Culture of Australian Family Lawyers: Pathways to Constructive Change' 25(1) *International Journal of Law, Policy & the Family* 71-99

The results of this study go part of the way towards our understanding of the experience of different sections of the target populations. We know that there are different profiles for men and women, for private school and public school educated men and women, for students from different law schools. We have also hypothesised some of the mechanisms by which the culture might be reinforced – for example to the extent that ‘finances’ are an overwhelming concern of practitioners who are interested in becoming barristers, the profession will naturally select for barristers who are financially secure before making the career transition. This may partly explain the trend towards – for example – a greater proportion of male barristers who attended private high schools.

Additionally it is clear that the perception of bias in the legal profession – particularly a bias against women and racial minorities – is evident, in both the literature and the qualitative results. Again, this study did not investigate the *existence* of such a bias in the profession, nor can it speculate on the accuracy of those perceptions. Nevertheless, the mere existence of these perceptions is itself concerning, and we ought to address them.

Our data consistently demonstrates that when considered by gender, there are few differences in students approaching the legal profession, in terms of perceived barriers, knowledge and belongingness. However, it remains the case that women and other minorities are under-represented as barristers in Western Australia. This suggests very strongly that the issue is not a simple one of women’s exclusion from the profession by overt discrimination. Instead, a much closer examination of where precisely the bottlenecks to women making the transition to the higher levels of the legal profession exist. Initial assessments of the data we have collected suggests that focusing on a more inclusive and accessible culture generally – rather than focussing on how to ‘fit’ women and other minorities into the existing legal culture – would have a more pronounced impact on the reported barriers to becoming a barrister.

Additionally, insofar as gay, bisexual, lesbian and transgender people, or people from other minority ‘culture’, may feel like they do not ‘belong’ in the legal profession, the solution proposed above—namely, to further investigate the bottlenecks that might exist that prevent people from diverse ‘cultures’ from practising at the bar—might flush out some of the issues that this study has been unable to identify. The potential to alter the culture of the legal profession to privilege inclusiveness and broad participation generally, rather than focussing on the opening the profession to any one particular demographic minority – will likely include addressing, substantively, the barriers faced by people from cultures other than the dominant culture that seems to exist.

Finally, some suggestions for improving diversity at the Bar have come from the literature. Needham suggests that showing students what *life at the bar is actually like* could encourage the diversity of the practitioners coming to the bar. Adamson has also proposed that breaking down the barrier of the ‘*self-perception*’ of readiness could assist to deepen the pool of barristers. Ultimately, perhaps, as Travers suggests, we can find the roots for all this, including the lack of knowledge about how to become a barrister, in legal education. Perhaps we need look no further than the culture at law schools to begin to understand the cultures at the bar (and as it inevitably follows) at the bench.

We envisage that future research will address the limitations of this study and enable a sharper focus on those groups who do not feel a ‘sense of belonging’ to the dominant culture at either law school, the legal profession, the bar or the bench. The present research has opened up the discussion and the research field in Australia. Now that we have a clearer idea of how to frame the right question, let the next cycle of work begin.

Appendix A

STUDENT variables.

1. I would like to become a barrister.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
2. I know how to become a barrister.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
3. What is your gender?
Female/Male
4. What is your age?
Under 20/20-25/26-30/31-35/36-40/over 40
5. How many years have you been at Law School?
1/2/3/4/5/over 5
6. Before university, did you attend a private or government high school?
Private/ Public (govt)/other
7. Do you still live at home?
No/yes
8. What is your marital status?
Never been married/Divorced/Currently married
9. Which Law School do you attend?
UWA/Murdoch/Notre Dame
10. What category most appropriately describes your racial/ethnic background eg.
Anglo-Chinese, Anglo- Australian, Italian, Indigenous Australian etc?
11. Please tell us what, if any, barriers you see to becoming a barrister.
*****Open ended question******
12. "I have felt like an outsider"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
13. "I have made friends easily"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
14. "I have felt as if I belong"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
15. "I have felt awkward and out of place"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
16. "I have felt lonely"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree

BELONGINGNESS

*Note that this variable is the sum of the belongingness questions divided by the number of belongingness questions to give an average belongingness score. A higher score indicates higher belongingness **to law school.**

LAWYER variables.

1. I would like to become a barrister.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
2. I know how to become a barrister.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
3. I have enjoyed being a lawyer.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
4. I enjoyed Law School.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
5. Please tell us what, if any, barriers you see to becoming a barrister.
*****Open ended question*******
6. What is your gender?
Female/Male
7. What is your age?
Under 20/20-25/26-30/31-35/36-40/over 40
8. How many years have you been practising law?
1/2/3-5/5-7/6-10/over 10
9. Before university, did you attend a private or government high school?
Private/ Public (govt)/other
10. What type of firm/business do you work in?
Small law firm (under 10 lawyers), medium size law firm (10-50 lawyers), large law firm (<50 lawyers), government, sole practice/in-house
11. What area of law do you practise in?
*****Open ended question*******
12. What is your marital status?
Never been married/Divorced/Currently married
13. How many children do you have?
1/2/3/4(or more)
14. Which Law School did you attend?
UWA/Murdoch/Notre Dame/other
15. What category most appropriately describes your racial/ethnic background eg. Anglo-Chinese, Anglo- Australian, Italian, Indigenous Australian etc? Anglo-Aus/other/indigenous
16. "I have felt like an outsider"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
17. "I have made friends easily"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
18. "I have felt as if I belong"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
19. "I have felt awkward and out of place"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree

20. "I have felt lonely"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree

BELONGINGNESS BELONGINGNESS

*Note that this variable is the sum of the belongingness questions divided by the number of belongingness questions to give an average belongingness score. A higher score indicates higher belongingness **to the law profession**.

BARRISTER variables.

1. I enjoy being a barrister.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
2. Please tell us what, if any, barriers you experienced in becoming a barrister.
*****Open ended question*****
3. Please tell us what, if any, challenges you experience being a barrister.
*****Open ended question*****
4. I enjoyed being a lawyer.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
5. I enjoyed Law School.
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
6. What is your gender?
Female/Male
7. What is your age?
Under 20/20-25/26-30/31-35/36-40/40-45/45-50/over 50
8. How many years have you been a barrister?
1-3/3-5/5-10/OVER 10
9. Before university, did you attend a private or government high school?
Private/ Public (govt)/other
10. Before becoming a barrister, what type of firm/business did you work in?
Small law firm (under 10 lawyers), medium size law firm (10-50 lawyers), large law firm (<50 lawyers), government, sole practice/in-house
11. What area of law do you practise in?
*****Open ended question*****
12. What is your marital status?
Never been married/Divorced/Currently married
13. How many children do you have?
1/2/3/4(or more)
14. Which Law School did you attend?
UWA/Murdoch/Notre Dame/other
15. What category most appropriately describes your racial/ethnic background eg.
Anglo-Chinese, Anglo- Australian, Italian, Indigenous Australian etc?
16. "I have felt like an outsider".
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree

17. "I have made friends easily"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
18. "I have felt as if I belong"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
19. "I have felt awkward and out of place"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree
20. "I have felt lonely"
Strongly disagree/ disagree/ neither agree nor disagree/ agree / Strongly agree

BELONGINGNESS BELONGINGNESS

*Note that this variable is the sum of the belongingness questions divided by the number of belongingness questions to give an average belongingness score. A higher score indicates higher belongingness **to the law profession**.

21. What else would you like to say about being a barrister?

*****Open ended question*****

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