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**The Report of the 20th Anniversary Review of the 1994 Chief Justice’s
Gender Bias Taskforce: Challenges and Opportunities**

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Thank you very much for the invitation to address you today on the Report of the 20th Anniversary Review of the 1994 Chief Justice’s Gender Bias Taskforce Report (the 2014 Report).

The 2014 Report was written to mark the occasion of the 20th anniversary of the 1994 Chief Justice’s Gender Bias Taskforce Report (the 1994 Report), by reviewing the extent to which recommendations in the 1994 Report had been implemented, and to identify areas where further action is needed to eliminate gender bias in the law (the Review).

The 2014 Report was published last month by Women Lawyers of Western Australia (Inc) (WLWA). Its 650 pages contain an extensive discussion of gender bias in the law and in the administration of justice in this State in a variety of areas, and include 197 recommendations about ways to eliminate that gender bias.

It is not possible in the time available this evening to do justice to the entire content of the 2014 Report or even to all of its recommendations. Instead, I propose to focus on 3 chapters in the 2014 Report which are likely to be of

particular interest to those attending this evening. I propose to discuss some of the key findings and conclusions, and to identify some of the key recommendations made, in each of those 3 chapters in the 2014 Report, before discussing some of the challenges and opportunities presented by the 2014 Report as a whole.

I will deal with the following matters:

1. What is gender bias?
2. The historical context for the 2014 Report and the genesis of the Review;
3. The scope and dimensions of the Review;
4. Selected themes from 3 chapters in the 2014 Report:
 - (a) Chapter 1: Women's access to justice and the environment of the Courts;
 - (b) Chapter 4: Aboriginal women and girls and the Law;
 - (c) Chapter 2: Career Paths for Women in the Legal Profession.
5. Implementation of the recommendations in the 2014 Report: Challenges and Opportunities.

1. What is gender bias?

The meaning of 'gender bias' was discussed in the Introduction to the 1994 Report, which quoted from a number of reports where the meaning of 'gender bias' was considered. It is convenient to repeat some of those quotes here to explain what is contemplated by the phrase 'gender bias'. The 1994 Report referred¹ to a discussion of gender bias by the Australian Law Reform Commission in its Discussion Paper on *Equality before the Law* (July 1993) which said:

¹ 1994 Report p25.

‘Gender describes more than biological differences between men and women. It includes the ways in which those differences, whether real or perceived, have been valued, used and relied upon to classify women and men and to assign roles and expectations to them. The significance of this is that the lives and experiences of women and men, including their experience of the legal system, occur within complex sets of differing social and cultural expectations.

Gender bias arises from stereotyped assumptions about the roles of women and men. When the bias disadvantages women, women, as a group, are treated as, or believed to be, less entitled, less valuable or less worthy than men.’

The 1994 Report also quoted² a report of the Maryland Task Force into Gender Bias in the Administration of Justice which suggested that gender bias exists in the following circumstances:

‘When people are denied rights or burdened with responsibility solely on the basis of gender.

When people are subjected to stereotypes about the proper behaviour of men and women which ignore their individual situation.

When people are treated differently in situations where gender should make no difference.

When women or men can be subjected to a legal rule, or policy or practice which produces worse results for them than for the other group.’

This meaning of the phrase ‘gender bias’ underlies the examination of gender bias in the law and in the administration of justice in the 2014 Report.

2. The historical context for the 2014 Report and the genesis of the Review

It is appropriate to take a few moments to consider the history of the 1994 Report. The Review can be seen as the continuation of an ambitious project Chief Justice Malcolm established in 1993, namely to establish a Taskforce on

² 1994 Report, p26 – 27.

Gender Bias (Taskforce), charged with the task of investigating the extent to which gender bias exists in the law and the administration of justice in Western Australia and to make recommendations for its elimination.

It is easy to lose sight of the significance of Chief Justice Malcolm's decision to establish the Taskforce. It was, in many respects, a radical step for its time because it involved the acknowledgment that gender bias may exist in the law and the administration of the justice in this State.

The law, the judiciary and the legal profession in 1993 were rather different when compared with the position today. There were, for example, no female judges on the Supreme Court of Western Australia. Judge Antoinette Kennedy had been on the District Court since 1985, and Judge Mary Ann Yeats would join her in July 1993. In 1985, Carolyn Martin had been the first woman appointed as a stipendiary magistrate. In 1993, there were no female judges on the Family Court of Western Australia and there were no female Federal Court judges in Perth. There were no female silks in Western Australia. And as for the substantive law, de facto relationships were not recognised in the jurisdiction of the Family Court and there was no restraining orders legislation, to cite but a couple of examples.

The existence of gender bias in the law and in the administration of justice had been examined in the United States, in Canada, in the United Kingdom, and more recently in Australia. In 1990, Regina Graycar and Jenny Morgan published their groundbreaking work *The Hidden Gender of Law*³ in which they examined hidden gender bias in the law, its institutions and among male lawyers and judges in Australia.

³ R. Graycar and J. Morgan, *The Hidden Gender of Law*, Federation Press, 1990; second edition 2002.

At around the same time - in August 1990 – Chief Justice Malcolm attended a conference in Edinburgh on the subject of Equality and the Administration of Justice: Race, Gender and Class. He later said⁴ that as a result of what he heard and learned at that Conference, he came to appreciate that there was a need for all judges, himself included, ‘to be made aware of the possibility of unconscious bias in decision-making and of bias in the substantive law in its application to women’.⁵

But Chief Justice Malcolm did not simply seek to educate himself, and other judges, about gender bias. Following on from the example set by a number of states in the United States and a number of Canadian provinces, the Chief Justice appointed the Taskforce to investigate the extent to which gender bias existed in the law and in the administration of justice in Western Australia, and to make recommendations for its elimination. The Taskforce was asked to examine gender bias in relation to the substantive law, the judiciary, the procedures of the courts, and the organisation and work of the legal profession.⁶ Chief Justice Malcolm described his objective in establishing the Taskforce in the following way:⁷

‘What I am concerned about is to ensure that we facilitate equality of women before the law and in the administration of justice, as well as equality of participation in the practice of the law and the administration of justice.

⁴ The Hon D. Malcolm AC, Chief Justice of Western Australia, ‘Women and the Law – Proposed Judicial Education Programme on Gender Equality and Task Force on Gender Bias in Western Australia’, (1993) 1 *Australian Feminist Law Journal* 140.

⁵ The Hon D. Malcolm AC, Chief Justice of Western Australia, ‘Women and the Law – Proposed Judicial Education Programme on Gender Equality and Task Force on Gender Bias in Western Australia’, (1993) 1 *Australian Feminist Law Journal* 140, 141.

⁶ The Hon D. Malcolm AC, Chief Justice of Western Australia, ‘Women and the Law – Proposed Judicial Education Programme on Gender Equality and Task Force on Gender Bias in Western Australia’, (1993) 1 *Australian Feminist Law Journal* 140, 144.

⁷ The Hon D. Malcolm AC, Chief Justice of Western Australia, ‘Women and the Law – Proposed Judicial Education Programme on Gender Equality and Task Force on Gender Bias in Western Australia’, (1993) 1 *Australian Feminist Law Journal* 140, 144.

...

There are obstacles to be removed. The judiciary, the profession and all who work in the courts need to be aware of and understand the hidden or unconscious gender bias in the law and the administration of justice so that it can be consciously and conscientiously eliminated and avoided.’

On 30 June 1994, Justice Henry Wallwork, the Chair of the Taskforce, presented the Chief Justice with the 1994 Report. In the years immediately after the 1994 Report was published, much was done to implement its recommendations. However, while many recommendations of the 1994 Report were implemented, many others were not. And that was despite the evidence which indicated that gender bias may exist in the operation of the substantive law, in the way the legal profession operates, and in the administration of the law.

Against this background, in about early 2011, WLWA determined that a review should be conducted of the 1994 Report, with a view to a report being published in 2014 to coincide with the 20th anniversary of the 1994 Report.

Let me now turn to briefly discuss the scope and dimensions of the Review.

3. The scope and dimensions of the Review

The terms of reference for the Review were:

1. To review the extent to which recommendations made in the 1994 Report have been implemented;
2. To the extent that any recommendations from the 1994 Report have not been implemented, to investigate and make recommendations in relation to whether, and if so how, those recommendations may now be implemented;

3. To investigate the extent to which gender bias continues to exist in the law and the administration of justice in Western Australia, and to make recommendations for its elimination;
4. To consult with such government agencies, organisations, groups or persons as the Steering Committee thinks fit in relation to these matters.

A Steering Committee was established to co-ordinate the Review. However, there were then established 9 sub-committees, each of which was responsible for investigating the subject areas addressed in each chapter in the 1994 Report. Although the work of the Review was guided by the Steering Committee, much of the 'hands on' work of investigation and consultation, and of the generation of suggestions for reform, was done by the members of these sub-committees.

As in the 1994 Report, the 9 chapters in the 2014 Report deal with the following subjects:

- Women's Access to Justice and the Environment of the Courts;
- Career Paths for Women in the Legal Profession in Western Australia;
- Appointment to the Judiciary;
- Aboriginal Women and Girls and the Law;
- Victims of Crime;
- Restraining Orders;
- Education; Laws which Discriminate against Women; Women's Role as Law Makers;
- Women and Criminal Laws; and
- Women and Punishment.

Preparation of the 2014 Report has involved extensive research into the substantive law and relevant literature, extensive investigation of the way in

which the law is administered in this State, extensive consultations with stakeholder groups and individuals, and a very considerable drafting and editing process.

The 2014 Report identifies numerous ways in which gender bias continues to exist in the law and its administration in Western Australia. That in itself is no small achievement. However, like the 1994 Report, the more significant aspect of the 2014 Report is that it makes many recommendations about how that gender bias may be eliminated.

4. Selected themes from 3 chapters in the 2014 Report

(a) Chapter 1: Women’s access to justice and the environment of the Courts

Chapter 1 of the 1994 report contained 27 recommendations with respect to a wide variety of issues concerning access to the legal system, and to the physical environment of the courts. By way of example, these included:

- *Legal and support services* – the 1994 Report recommended the provision of a support service for women, support for specialist women’s legal services, the provision of greater resources for women to access information about the legal system, and better resourcing for community legal centres to provide advice and representation to women;⁸
- *Child care* – the 1994 Report recommended that child minding facilities be provided in the courts;
- *Vulnerable witnesses and victims* – the 1994 Report recommended that court precincts contain areas defined specifically for witnesses and

⁸ Recommendations 4, 5 and 6 of the 1994 Report.

defendants, for applicants and respondents, for victims, and for families and supporters of female victims awaiting a hearing;⁹

- *Judicial education* – the 1994 Report recommended that training be provided to judicial officer in relation to the position of female victims, Aboriginal women and non-English speaking women.¹⁰

Implementation of the recommendations made in Chapter 1 of the 1994 Report

The 2014 Review found that a number of the recommendations from Chapter 1 had been implemented, at least in part, but that a number of the recommendations from Chapter 1 required further attention.¹¹ By way of illustration of these, it suffices to refer to the recommendations I have mentioned already:

- *Legal and support services* – The 2014 Review noted that a number of legal and support services have been established, or continued, since 1994. These include the Women’s Law Centre (in 2002), the Family Relationships Advice Line, Legal Aid’s Domestic Violence Legal Unit and the development and expansion of the Victim Support Service and the Child Witness Service (first established in 1992). (Legal services are also available to women through a variety of other sources, including community legal services, the Aboriginal Legal Services, Legal Aid, and the Women’s Information Service run by the Department of Local Government and Communities.)
- *Child care* – The 2014 Review noted that only the Family Court provides child-minding facilities.

⁹ Recommendations 47, 48 and 49 of the 1994 Report.

¹⁰ Recommendations 39 and 40 of the 1994 Report.

¹¹ 2014 Report p18.

- *Vulnerable witnesses and victims* – The 2014 Review noted that while facilities for vulnerable witnesses are considered in all new court complexes, they had not been provided in existing court complexes.
- *Judicial education* – The 2014 Review noted that there is considerably greater information available to the judiciary about issues relating to gender and cultural diversity (eg the Equality Before the Law Bench Book). However, there are no regular programmes of gender and cultural awareness for judicial officers.

The recommendations in the 2014 Report

Chapter 1 of the 2014 Report contains 46 recommendations. Broadly speaking, these can be divided into 3 themes:

- Legal and support services;
- Facilities in the courts;
- Personnel and education – judicial officers, staff, the profession, community.

Dealing with each of these themes in turn, let me identify a couple of examples of the recommendations made in Chapter 1.

Legal and Support Services

One of the key concerns identified in Chapter 1 is the demonstrable need for legal services to meet the demand for such services for women to enable them to deal with issues they face in the areas of civil, family and criminal law.

A key finding in the 2014 Report in relation to legal services for women is that:

‘it remains the case in 2014 that women still have fewer financial resources available to them, and remain in a lower socio-economic and more disadvantaged group than men, meaning that they are less able to

take advantage of legal services, to retain quality counsel, and therefore to access justice on an equal footing with men. Some of the reasons behind this disparity include the fact that women tend to be in lower paid work, work part time and are commonly in and out of the workforce due to responsibilities for caring for children and the elderly. Further, women are more often than men victims of crime, particularly family and domestic violence.... Accordingly, the need for specialised services for women as a gender group, and accessibility for those who are financially dependent, is extremely high. These issues are further compounded for women from Aboriginal or culturally and linguistically diverse backgrounds, women living in remote or regional areas, the elderly and the young, all of whom experience even higher rates of social inequity, discrimination and disadvantage.’¹² (footnotes omitted)

The 2014 Report concludes that many women cannot afford private lawyers, eligibility for legal aid is restricted, especially in family law matters, and community legal centres are struggling to deal with the level of demand and limited resources, especially in regional areas.¹³ The 2014 Report also concludes that there is an indirect gender disparity in the way legal aid is granted. That is because Legal Aid WA funding is strongly biased towards criminal law, and it is men who more commonly require legal aid for criminal matters. In contrast, the majority of applicants for legal aid funding for family law matters are women and children. The gender bias arises because overall more men than women receive grants of aid, and there are fewer limitations on grants made in criminal law proceedings as compared with family law proceedings.¹⁴

The recommendations made in the 2014 Report to address these instances of gender bias included that within 2 years the State Government increase funding for specialist women’s legal services and community legal centres, to address

¹² 2014 Report at p36.

¹³ 2014 Report at 37, 39.

¹⁴ 2014 Report at 40.

areas of legal need for women including (but not limited to) civil disputes and court advice and representation;¹⁵ that within 2 years the State Government fund the provision of legal services to women in relation to family law property settlement matters, through grants to Legal Aid WA and community legal centres,¹⁶ and that within 2 years the State Government provide funding for legal services for women in rural, regional and remote areas of Western Australia.¹⁷

In addition, the 2014 Report recommends that the State Government work with the Commonwealth Government to recognise and address the indirect discrimination against the circumstances of women in the application of current Legal Aid WA funding, and the specific barriers to justice that women face, in order to tailor the legal aid system to meet the particular needs and experiences of women, and that the government report to State Parliament about these matters within 2 years of this Report.¹⁸

The 2014 report also recommends greater liaison between government service providers, Legal Aid WA, community legal centres, and specialist women's services providers (both legal and non-legal) to ensure mutual understanding of each other's services, and to assist with cross-referral of women in an accurate, timely and efficient manner.¹⁹

An interesting, related recommendation relates to the consolidation of related legal and non-legal services for women into 'one-stop shops'. This recommendation flowed from the feedback during consultation that services to

¹⁵ 2014 Report recommendation 1.1.

¹⁶ 2014 Report recommendation 1.4.

¹⁷ 2014 Report recommendation 1.19.

¹⁸ 2014 Report recommendation 1.3.

¹⁹ 2014 Report - Recommendation 1.7.

women are often provide in a fragmented manner and that this can create further difficulties for women who are dealing with disadvantage on a number of levels.²⁰ The 2014 Report recommended that the provision of a one-stop shop for legal and related services by women be considered and provided through a pilot programme within 2 years.²¹

Facilities in the Courts

Child-minding facilities

One of the major issues raised in the course of consultations in the 2014 Review was the lack of child minding facilities at the courts. Only the Family Court has on-site child care facilities. The District Court has a small children's play area, and a family friendly public café in the building, but that is the sum total of facilities for those with children. In addition, the Department of the Attorney General provides assistance with the cost of offsite childcare for jurors, witnesses, defendants, or litigants who need to attend court.²²

There can be no doubt that Court rooms are generally unsuitable environments for young children. But the reality is that sometimes it is unavoidable that parents who find themselves required to appear as litigants, witnesses or for jury service, will have no alternative but to bring their children with them to court. During the consultations for the 2014 Review it was noted that it is not uncommon to see children in the back of the Magistrates Court during hearings. Because it is more common in our society for women to bear responsibility for the care of children, securing care for children while attending court is a problem which is more likely to be experienced by women than by men.

²⁰ 2014 Report p46.

²¹ 2014 Report- Recommendation 1.9.

²² 2014 Report at 74.

The 2014 Report concludes that it is preferable to have child minding facilities located on site at the courts, rather than to pursue child care at an off-site child care centre. One of the reasons for this conclusion is the difficulty in obtaining a place at a child care centre, given the limited availability of child care places in our community. The Family Court crèche facilities were highlighted as an example of how child-minding facilities can be successfully operated on site at a court.

Accordingly, the 2014 Report recommended that within 12 months, the State Government review and report on how to best implement child-minding facilities in all court precincts, using the Family Court of WA's crèche as a desired model.²³

The 2014 Report also recommends that within 2 years the State Government make child-minding facilities available in major suburban and regional court locations, commencing with the Cathedral Square Justice precinct which will cover the Supreme Court, District Court, Magistrates Court and the State Administrative Tribunal.²⁴

Waiting areas

Another aspect of court facilities found to be inadequate concerns the absence of defined areas within court precincts for witnesses and accused persons, for applicants and respondents, and for victims of family and domestic violence in particular. For victims of family or domestic violence, who more commonly are women, the potential to encounter the alleged perpetrator of the violence in the precincts of the court can significantly affect access to justice, and to the way in

²³ 2014 Report recommendations 1.25(a).

²⁴ 2014 Report recommendations 1.25(b) and (c).

which the victim is able to give evidence as a witness or party to the proceedings.²⁵ In some of the Magistrates Courts there is scope for applicants for restraining orders to wait in a separate restricted access area.²⁶ The Albany Court has facilities to enable the separation of parties.²⁷ But such arrangements do not, generally speaking, extend to other vulnerable witnesses, especially in courts outside the metropolitan area.

Accordingly, the 2014 Report recommended that as a matter of urgency (and within 12 months) the State Government make available appropriate accommodation within all court buildings for victims of family and domestic violence.²⁸

A related issue concerns the lack of separate waiting areas for witnesses and accused persons, and applicants and respondents. There has been little improvement in this respect since the 1994 Report. This is an especially acute problem in a number of regional courts (for example, in Fitzroy and Newman) where there are no defined waiting areas at all.²⁹ Accordingly, the 2014 Report recommends that the State Government give urgent priority to redefining areas in court precincts to include separate entrances and separate areas for witnesses and accused persons and for applicants and respondents.³⁰

²⁵ 2014 Report p64 – 65.

²⁶ 2014 Report at 65.

²⁷ 2014 Report at 65.

²⁸ 2014 Report recommendation 1.21.

²⁹ 2014 Report at 67.

³⁰ 2014 Report recommendation 1.22.

Personnel and Education

The 2014 Report concludes that ‘it is critical to the administration of justice that we have culturally aware court staff and judicial officers’³¹ but that there was insufficient information and training on gender and cultural issues combined.³²

The 2014 Report includes a number of recommendations addressing this issue. For example, the 2014 Report recommends that the State Government increase funding for judicial education for all judicial officers in Western Australia, to address issues including gender bias and cultural diversity.³³

There are also recommendations directed specifically to increasing cultural awareness. The 2014 Report recommends that all judicial officers commit to increasing their cultural awareness of issues and barriers facing women from culturally diverse backgrounds, including Aboriginal and non-English speaking women, by undertaking cultural awareness training, within 2 years of the Report,³⁴ and that they be assisted in doing so by the provision of cultural awareness training, both on their appointment and then at least every 2 years thereafter.³⁵

There is also a recommendation that within 2 years the State Government produces, or funds the production of, a bench book for judicial officers (similar to the Aboriginal Cultural Awareness Bench Book) which addresses issues surrounding cultural diversity, including the impact of cultural, religion and

³¹ 2014 Report p53.

³² 2014 Report p55.

³³ 2014 Report recommendation 1.30.

³⁴ 2014 Report recommendation 1.15.

³⁵ 2014 Report recommendation 1.31.

gender, and how these issues affect women from culturally and linguistically diverse backgrounds from accessing justice and the court system.³⁶

Gender and cultural awareness is also important among court staff. Accordingly the 2014 Report recommended that the State Government implement a regular training programme for all court personnel to address topics including issues relevant to the cultural background and gender of court users.³⁷

(b) Chapter 4: Aboriginal women and girls and the Law

The 1994 Report made 51 recommendations in relation to the elimination of gender bias in the law and administration of justice as it affects aboriginal women and girls. I want to focus on 3 themes which emerged from those recommendations:

- The need for cross cultural awareness training;
- The need for legal services for aboriginal women; and
- The need for safe houses to protect aboriginal women and children from violence.

In addition I want to discuss an issue which emerged in the 2014 consultations which had not been considered in the 1994 Report, namely the existence of gender bias in the administration of the law relating to native title.

The recommendations captured by the first 3 themes are directed to dealing with some of the implications of the fact that far too many Aboriginal women have contact with our justice system in one of two ways – as persons accused of

³⁶ 2014 Report recommendation 1.16.

³⁷ 2014 Report recommendation 1.46.

criminal offending, or as the victims of criminal offending, particularly of domestic violence. The 2014 Report notes that Aboriginal women ‘have fared very badly in their contact with the criminal justice system’ in the 20 years since the 1994 Report. To mention but a few of the statistics cited in the 2014 Report:

- Arrest rates for Aboriginal women between 1991 and 2007 increased 99%;
- The imprisonment rate for Aboriginal women is about 1 in 160 people, which surpasses even the rate of imprisonment of African-American women in the United States;
- In 2014, almost 47% of female prisoners in Western Australia are Aboriginal.

Cultural Awareness training

One of the key themes of the recommendations made in the 1994 Report concerned the provision of cross cultural training for court staff, justices of the peace, judicial officers, police and for prosecutors in the Office of the Director of Public Prosecutions (ODPP). The reasoning behind those recommendations was, and continues to be, that people who work in the criminal justice system ‘need a sound understanding about how the past has contributed to the issues facing the Aboriginal community today’.³⁸

The 2014 Report notes that although some steps have been taken to pursue cultural awareness training since 1994, more needs to be done. For example:

- Aboriginal cultural awareness training for court staff and employees of the Department of the Attorney General is provided through on-line courses, but completion of these courses is not mandatory, and a lack of

³⁸ 2014 Report, p275.

local service providers has hindered cultural awareness training in regional areas, despite DOTAG's efforts to provide it;³⁹

- Despite some initial Commonwealth funding for judicial cultural awareness training, all funding for cross-cultural awareness courses ceased in 2011, and since then no cultural awareness training has been provided for new or serving judicial officers in this State;⁴⁰
- Justices of the Peace receive some cultural awareness training through training sessions conducted at least once a year, and through a DVD kit produced by the Department of the Attorney General (DOTAG) which has been circulated to metropolitan and regional courts. Magistrates in regional areas also endeavour to assist in co-ordinating training for Justices of the Peace. The 2014 Report notes that in regional areas, justices of the peace are sometimes required to consider bail applications or to be present during police interviews of juvenile suspects, and it is important that justice of the peace have 'cultural competence' when Aboriginal women, men and children are involved.⁴¹
- Between 2007 and 2012, the ODPP held a number of 2 day cultural awareness training sessions for prosecutors. However, since 2013 difficulties in finding presenters, and increasing staff workloads, have made it impossible to hold these longer sessions, and training has been limited to a half day cultural awareness course run every 12 months which all staff are required to complete. In addition, there is regular continuing legal education sessions and advocacy training on related topics, such as vulnerable witnesses and complainants, including Aboriginal women and children. Aboriginal cultural awareness training is of particular importance if prosecutors are to be equipped with the

³⁹ 2014 Report p276 – 277.

⁴⁰ 2014 Report p277 – 278.

⁴¹ 2014 Report p278 – 279.

skills they need to engage with sensitivity and an understanding of the particular needs and experiences of Aboriginal women and children who are victims of crime.⁴²

- New recruits to the Police attend a 2 day cultural diversity course, but only 2 hours of this time is spent on Aboriginal culture, under the guidance of instructors who are police officers. There is no face to face discussion with Aboriginal people in this training. Aboriginal cultural awareness training is not made available to serving police officers but rather is included within training on other themes, including equal opportunity, police values, mental health first aid and so on.⁴³ The 2014 Report concludes that the lack of regular Aboriginal cross cultural awareness courses for serving officers is ‘totally inadequate’.⁴⁴

For this reason, the 2014 Report makes 8 recommendations which are directed to ensuring that the staff of the courts, judicial officers, justices of the peace, new and serving police officers, and prosecutors in the Office of the Director of Public Prosecutions receive Aboriginal cultural awareness training.⁴⁵ The 2014 Report also deals with the content of such Aboriginal cultural awareness training, and recommends that it involve a comprehensive overview of Aboriginal history and culture and the effects of colonisation, consider the impact of past government policies on Aboriginal culture, families and communities, include Aboriginal women as lecturers in order to ensure Aboriginal women’s culture and perspectives are included, allow sufficient time to discuss issues with Aboriginal people and should involve a total of two days’

⁴² 2014 Report p279 – 280.

⁴³ 2014 Report p280 – 282.

⁴⁴ 2014 Report p282.

⁴⁵ 2014 Report recommendations 4.2 – 4.8.

training for the complete course, with the option of completing such training in multiple shorter modules.⁴⁶

The provision of legal services for Aboriginal women

The 1994 Report recommended that a separate Aboriginal Women's Legal Service be established to overcome the conflict of interest situations which prevent the Aboriginal Legal Service from acting for Aboriginal women, and to fully serve the legal needs of Aboriginal women.⁴⁷ However, the 1994 Report also recommended that more resources be made available to the Aboriginal Legal Service for the creation of a separate women's issues unit and for an after hours crisis service.⁴⁸

The consultation undertaken for the 2014 Report revealed that efforts were made to create a separate women's unit within the ALS but these were unsuccessful. An Aboriginal Family Law Services unit within the ALS also experienced difficulties because alleged offenders were accessing the same legal services as their alleged victims. More generally, one of the problems faced by Aboriginal women in obtaining legal services through the ALS is that the ALS acts for alleged offenders, who are usually male.

On the other hand, the Review identified a number of additional agencies (which did not exist in 1994) and which now provide services for Aboriginal women.⁴⁹ These include:

- the Family Violence Prevention Legal Services (FVPLS) programme funded by the Commonwealth (which provides legal and counselling services for victims of family violence and/or sexual assault who are

⁴⁶ 2014 Report recommendation 4.1.

⁴⁷ 1994 Report, Chapter 4, recommendation 25.

⁴⁸ 1994 Report, Chapter 4, recommendation 24.

⁴⁹ 2014 Report p294 – 297.

Aboriginal or Torres Strait Islander people, and operates through service providers in Perth and in 8 regional centres in WA);

- the Women’s Law Centre of WA (a not for profit community organisation which helps women facing disadvantage especially with family law and children’s issues, and which has an outreach project for Aboriginal women in remote communities);
- Djinda (a new service funded by the State government through DOTAG under a WA FVPLS programme, which provides support for Aboriginal women in the Perth area affected by family violence and sexual assault);
- Victim Support Services, the Child Witness Service and the Family Violence Service in WA, all of which provide services to victims of crime, including risk assessment and safety planning and support for Aboriginal women who have been victims of family violence.

Some strong support for the creation of an Aboriginal Women’s Legal Service emerged in the consultation for the 2014 Report. However, others suggested that in light of the recent cuts to the ALS’ budget it would be almost impossible to set up an entirely new and separate Aboriginal women’s legal service. The Chapter 4 sub-committee considered all of these views and concluded that it was not realistic to propose the establishment of a new and separate Aboriginal women’s legal service. However, what it has recommended is the continuation of, and an increase in the funding for, the existing programmes which are available to meet the needs of Aboriginal women, with the objective of ensuring a statewide network of services, including funding for after-hours legal services.⁵⁰ A further recommendation is that the Department of the Attorney General should determine the location and extent of any gaps in the services available to Aboriginal women and report to the Attorney General on these

⁵⁰ 2014 Report recommendation 4.13.

within 12 months, and that those gaps be filled by an increase in funding within 2 years.⁵¹

Safe Houses

The 1994 Report recommended that Commonwealth funding be made available to establish safe places for the protection of women and children who were victims of assault.⁵²

The consultation undertaken for the 2014 Report revealed that most regions had safe houses or women's refuges but two issues threatened the adequacy and availability of these safe houses: uncertainty as to funding for homelessness services, and the increasing Aboriginal population in the Perth metropolitan area (up 18.7% between 2006 and 2011) with no commensurate growth in the number of refuges.

In order to address this concern, while recognising the continuing importance of implementing the original recommendation, the 2014 Report recommends that the State and Commonwealth governments commit to funding adequate safe houses for vulnerable people, especially Aboriginal women and children escaping family and domestic violence, and commit to funding adequate, secure and affordable housing for Aboriginal women and children left homeless by family and domestic violence.⁵³

Aboriginal women and the Native Title Process

Not surprisingly, the 1994 Report did not deal with questions of gender bias in relation to the process by which native title is established. But that issue

⁵¹ 2014 Report recommendation 4.14.

⁵² 1994 Report, Chapter 4, recommendation 20.

⁵³ 2014 Report, recommendations 4.17 and 4.18.

emerged during the consultations for the 2014 Report as one which warranted further consideration. The process for establishing native title involves naming a group of native title claimants as the applicants on behalf of the particular Aboriginal community seeking to establish native title in respect of land. Yet it has tended to be Aboriginal men who, with the assistance of lawyers (who are also generally men), determine who is to be included in the applicant group. The concern is that there is a risk that women in the claimant group will be marginalised if women are not actively included in the native title litigation process.⁵⁴ This is despite the fact that Aboriginal women often have or maintain much cultural and spiritual information which forms the evidentiary foundation for a connection with the land.⁵⁵

For this reason, the 2014 Report recommends that the current legislative review of the National Native Title Tribunal should consider the need for gender specific advocates for native title claimant groups so that if culturally appropriate, women claimants may have access to women advocates to support them through the native title process.⁵⁶ In addition, the 2014 Report recommends that the current review should consider requiring that all lawyers involved in native title claims, together with anthropologists and other experts involved, should undertake Aboriginal cultural awareness training taught by Aboriginal women from the claim area.⁵⁷

(c) Chapter 2: Career Paths for Women in the Legal Profession

The consideration of Career Paths for Women in the Profession in Chapter 2 is divided into the following areas of consideration:

- Gender Bias in Academia

⁵⁴ 2014 Report p314.

⁵⁵ 2014 Report p315.

⁵⁶ 2014 Report recommendation 4.25.

⁵⁷ 2014 Report recommendation 4.26.

- Gender Bias in the Profession – Graduates;
- Issues facing women in legal practice
- Sexual harassment
- Women at the bar
- The Office of the Director of Public Prosecutions and the State Solicitor’s office;
- New issues: Conditions of Work, Availability of Career Support, Changed Culture of the Profession, Women Leaders in the Law.

Again, I do not propose to discuss all of these aspects of Chapter 2, but instead to pick out some which may be of particular interest to you.

By way of general observation, the gender bias concerns identified in the 2014 Report in relation to career paths for women lawyers are, generally speaking, not unique to women lawyers. They reflect the issues that our society as a whole is grappling with – the many manifestations of the juggle of work and family responsibilities, and the question of how to achieve the crucial transition in our workplaces from a model that prioritises full-time, face to face service from employees, to one which appreciates that employees can make valuable contributions in a workplace at different times, to different extents, and given advances in technology, even from different locations.

Gender Bias in Academia

No recommendations were made in the 1994 Report in relation to gender bias in university law schools. However, there was some discussion in that Report in relation to the gender imbalance in academic staff, within the ranks of senior

positions, and among those in part time employment (mostly men who held positions in other legal organisations).⁵⁸

There have been a number of positive developments in this area since 1994. Many more women are working in the law schools, and women have progressed into senior roles, including the position of dean and assistant dean. Many women academics now hold fractional appointments, and the Law Schools provide flexible working arrangements for staff, particularly those with family responsibilities.⁵⁹

The area of present concern identified in the consultations concerns promotions, because research requirements which are prerequisites for promotion can act as a barrier for women who balance family commitments with academic work.⁶⁰ Accordingly, the 2014 Report recommends that:

- universities in this State review the impact of promotional policies on female staff members with a view to implementing policies that support and encourage women's academic careers,⁶¹ and
- promotion committees should not refuse an application for promotion solely on the basis that the female applicant, who is a primary care giver, has not achieved the same amount of research and published works as her male counterpart, if all other requirements for promotion have been met.⁶²

⁵⁸ 2014 Report, p135.

⁵⁹ 2014 Report, p136.

⁶⁰ 2014 Report, p136.

⁶¹ 2014 Report recommendation 2.1.

⁶² 2014 Report recommendation 2.2.

Gender Bias in the Profession – Graduates

The focus of the concerns identified in relation to graduate recruitment in the 1994 Report concerned gender based questions in employment interviews. Concerns of that kind were not raised in the consultations for the 2014 Report.

The concerns which were raised instead included the fact that there is some evidence to suggest that female law graduates earn less than their male counterparts – somewhere around 3.8% or 7.8% depending on the particular research one looks at.⁶³ However, the Report identified a more fundamental problem, which lies in the difficulties in obtaining information on graduate employment statistics simply because it is not being regularly or systematically sought from graduates. Without that information it is difficult to identify precisely the extent of the discrepancy and what its causes might be. Accordingly the 2014 Report recommends that the College of Law survey students and alumni annually to try to gather data on gender imbalance in graduate employment.⁶⁴

Another concern which was raised related to the flow-on effect of the competitive graduate job market. The competition for jobs has seen staff working longer hours, for lower incomes. This pressure can impact more significantly on women who are more likely to be juggling responsibilities as the primary caregiver in a family. The 2014 Report therefore recommends that the Law Society recommends guidelines or minimum standards for graduates in relation to matters such as working conditions and salary.⁶⁵

⁶³ 2014 Report p137.

⁶⁴ 2014 Report recommendation 2.5.

⁶⁵ 2014 Report recommendation 2.4.

Issues facing women in legal practice

The focus of the 1994 Report's recommendations concerning practice issues for women was flexibility – in working hours, the availability of part-time work, job sharing, work location, career breaks and leave for child care.⁶⁶ In addition, it was recommended that the Law Society publish guidelines on equal opportunity, and adopt a code of conduct addressing gender bias and establishing procedures for its elimination.⁶⁷ I should explain that although parental leave and flexible work practices are issues for both men and women (and therefore not directly or necessarily a gender issue) they become gender issues because women are most often the primary care giver.

The results of the consultations undertaken in relation to these issues for the purposes of the 2014 Report make for disheartening reading. This is one area in which progress since the 1994 Report appears to have been glacially slow, and where indirect gender bias appears insidiously entrenched.

Let me outline some of the themes which emerged in the consultations about issues for women relating to legal practice:⁶⁸

- despite the fact that more women than men are graduating from law school (and have been for many years), and that women make up 61% of lawyers admitted to practice, women are still significantly under-represented in all organisations at senior levels;⁶⁹
- the model of a senior member of the profession is still primarily a male working partner with a stay at home spouse;
- in the large commercial law firms women presently make up 19% of partners (of whom 14.2% are women partners with children). (This is a

⁶⁶ 1994 Report, Chapter 2 Recommendation 3.

⁶⁷ 1994 Report, Chapter 2 Recommendation 5.

⁶⁸ See 2014 Report, 138 – 151.

⁶⁹ 2014 Report, p143.

significant improvement on the 1994 position when only 5% of partners in large firms were women.) Many female partners are the primary income earner in their household and have a partner at home in a more supportive role.

- success for women in career progression is significantly affected by the impact of maternity leave and of returning to work and juggling family care responsibilities with work;
- while most large firms have flexible working policies, these do not always translate easily into workplace practices. Some employers remain unsure of how to implement flexible work practices;
- in many workplaces there is a lack of suitable breastfeeding and baby changing facilities;
- the great majority of people using flexible work arrangements as a result of their child care responsibilities are women;
- taking parental leave and utilising flexible work practices can impact substantially on career opportunities. Despite the availability (at least in theory) of flexible work practices, to actually pursue flexible work practices is often viewed negatively in relation to opportunities and career progression. Women lawyers who arrive later, and leave earlier, than their colleagues because they need to drop children at school or child care and collect them later in the day, are often not perceived to be as serious about their career, or as hard working, as their colleagues;
- the way lawyers typically charge for their work exacerbates the problem because fees are time-based – those who work less hours because they are working part-time or using flexible working arrangements will inevitably produce more modest billings;
- the availability and affordability of child care is a real problem, as are establishing arrangements for after-hours care or for emergencies.

Affordability is such a problem that the cost relative to net income can mean it is not economic to work and pay for child care.

In relation to these issues, the recommendations in the 2014 Report include recommendations that:

- The Law Society publishes information on flexible work practices including guidelines and examples of best practice to inform the profession and the public about flexible work practices;⁷⁰
- The Law Society provides continuing professional development sessions for lawyers and non-lawyers on flexible work practices and their implementation;⁷¹
- The Law Society sets, publishes and promotes targets for the number of women in legal practice and asks law firms to report annually on their achievement of these targets, as part of the reporting requirements for the quality practice standard or as part of other quality assurance systems;⁷²
- The Law Society sets, publishes and promotes targets for employers with respect to women in leadership positions in the legal profession, and reports on progress by publishing profession-wide statistics and trends on gender equity;⁷³
- Employers implement strategies to achieve these targets, including targeted coaching, mentoring, and ensuring lawyers working flexibly are able to continue to progress their careers;⁷⁴

⁷⁰ 2014 Report recommendation 2.6.

⁷¹ 2014 Report recommendation 2.7.

⁷² 2014 Report recommendation 2.12.

⁷³ 2014 Report, recommendation 2.41.

⁷⁴ 2014 Report recommendation 2.13.

- Employers adopt more flexible conditions for promotion, including removing criteria based purely on post qualification experience, or hours worked, and to acknowledge work quality and output instead;⁷⁵
- Employers provide reintegration training to assist those returning from extended periods of leave (such as maternity leave) to update their skills and knowledge;⁷⁶
- Employers should identify strategies to counter the view that flexible work equates to low career aspirations;⁷⁷
- Employers should consider steps to implement cultural change, including to reduce the focus on face to face time in the office, and to mainstream formal flexible working arrangements;⁷⁸
- Employers accommodate flexible work practices by providing remote access to the office, and implementing policies on expectations for the completion of work outside business hours;⁷⁹
- Employers consider what arrangements they can make to assist their staff with access to, and the cost of childcare, including preferred supplier arrangements with child care centres and salary packaging;⁸⁰
- Unconscious bias training should be mandatory and regular as part of ongoing continuing professional development requirements.⁸¹

Sexual harassment

The focus of the 1994 Report in so far as it concerned sexual harassment was that sexual harassment should be included as unprofessional conduct under the Professional Conduct Rules which were then in force. Sexual harassment was

⁷⁵ 2014 Report recommendation 2.9.

⁷⁶ 2014 Report recommendation 2.9.

⁷⁷ 2014 Report recommendation 2.9.

⁷⁸ 2014 Report recommendation 2.15.

⁷⁹ 2014 Report recommendation 2.16.

⁸⁰ 2014 Report recommendation 2.17.

⁸¹ 2014 Report recommendation 2.14.

not specifically prohibited, but sexual harassment falls within the more general descriptions of the conduct prohibited by the *Legal Profession Conduct Rules 2010* (WA).

The results of the consultation in so far as it concerned sexual harassment, together with the recent report of the Law Council of Australia on the *National Attrition and Re-engagement Study Report* (NARS Report⁸²), are deeply concerning because they reveal that sexual harassment is still occurring in the legal profession. According to the NARS Report, 1 in 4 women had experienced sexual harassment in their workplace.⁸³

The existence of such statistics, notwithstanding that sexual harassment is prohibited by the professional conduct rules, tells us that eliminating sexual harassment requires more than just the prospect that disciplinary action might be taken. Perpetrators engage in behaviour of this kind because they think that they can get away with it, or because they think there is no harm in it. In order to discourage sexual harassment, there needs to be a clear culture in a workplace that conveys the message that sexual harassment is completely unacceptable, and a culture in which practitioners in the workplace will speak out against inappropriate conduct by their colleagues if they become aware that it is occurring. That requires education and awareness training for all practitioners. In addition, incidents of sexual harassment can have adverse effects on the victim long into the future, so there needs to be counselling and support for victims to empower them to report inappropriate conduct to those who can take steps to ensure that it will not be repeated, and to facilitate recovery from the personal effects of harassment.

⁸² Law Council of Australia *National Attrition and Re-engagement Study (NARS) Report*, 2014, Urbis Pty Ltd.

⁸³ 2014 Report, p155.

The recommendations in the 2014 Report in relation to sexual harassment include that the Law Society should promote understanding and awareness of what constitutes sexual harassment and of how such conduct may contravene lawyers' professional conduct obligations,⁸⁴ and that the Law Society should continue the Law Care (WA) counselling and information service to assist practitioners dealing with difficulties arising out of instances of unprofessional conduct or professional misconduct.⁸⁵

Women at the bar

A particular concern in 1994 was the small number of women practising at the independent bar.⁸⁶ The consultations undertaken for the purpose of the 2014 Report revealed that the position has improved somewhat, as the number of women practising at the bar has increased, and there are now 5 women senior counsel at the bar (including 3 appointed in 2013).⁸⁷ However, many of the same issues which faced women barristers in 1994 continue to exist today.

Among the findings revealed by the consultations were the following:⁸⁸

- Women comprise approximately 20% of practising barristers;
- The National 2009 Court Appearance Survey indicated that male barristers appear in 86% of appearances briefed by private law firms and 70% of all other appearances, and that the average length of the appearance was greater for men than women (which tends to suggest that overall male barristers are briefed in more complex matters);
- There is little data to assist in determining the reason(s) why there are lower numbers of women practising as barristers;

⁸⁴ 2014 Report, recommendation 2.21.

⁸⁵ 2014 Report, recommendation 2.22.

⁸⁶ 2014 Report p157.

⁸⁷ 2014 Report p161.

⁸⁸ 2014 Report p158 – 163.

- There may be a variety of reasons why women may find it more difficult to practise at the bar. Some of these may include the fact that women more commonly bear additional family responsibilities (for children and elders) and take breaks in their working life for maternity leave and to raise small children;
- The WA Bar Association has a model briefing policy which advocates that when briefing counsel, solicitors should endeavour to identify and engage female barristers and regularly review the nature and rate of their engagement. However, it appears that the policy is not well known within or outside the bar;
- The WA Bar Association as a whole does not have a maternity or parental leave policy, although Francis Burt Chambers does have in place policies designed to accommodate such leave;
- Court hours can pose difficulties for all counsel with parental or family responsibilities. If a court lists a matter for hearing outside regular court hours, or if a matter runs late, or runs over into days not previously allocated, this can create real difficulties for those with inflexible family care arrangements (eg at child care centres);
- Francis Burt Chambers is the only barristers chambers to have established a pupillage programme, although it is generally open only to practitioners admitted for less than 5 years;
- Mentoring at the bar appears to exist only informally and there are no formal mentoring programmes in place;
- The Commonwealth has in place directions for the engagement of counsel which are directed to encouraging Commonwealth agencies and their service providers to brief women, and to report as to their briefing of counsel, but no such system exists at the State level.

In view of these findings, the 2014 Report recommends that the WA Bar Association reviews and effectively publicises its Model Briefing Policy, implements a formal mentoring programme open to all barristers, and that all bar chambers review or introduce parental leave and other policies to facilitate that leave, and flexible working arrangements.⁸⁹

The 2014 Report also recommends that the Law Society and the WA Bar Association lobby the State Government to adopt a policy similar to that underlying the Commonwealth's legal services directions so as to encourage State agencies to brief women barristers, and that the Law Society and the WA Bar Association support calls for court listings to be restricted to the hours between 9.15am and 4.30pm, other than in the case of emergencies.⁹⁰

New issues in 2014: Conditions of Work, Availability of Career Support, Changed Culture of the Profession, Women Leaders in the Law.

Some new issues emerged in the course of the consultations undertaken for the 2014 Report. The first concerned conditions of work, including salaries and drawings, including the following:⁹¹

- there is anecdotal and some empirical evidence that male lawyers are paid more than their female counterparts in some private law firms in this State;
- while many workplaces offer identical rates of pay, promotion is more difficult for women to achieve and so they effectively remain on lower rates of pay than men;
- far more women than men utilise flexible working arrangements and it is extremely difficult to secure a promotion while doing so;

⁸⁹ 2014 Report recommendations 2.23, 2.24 and 2.26.

⁹⁰ 2014 Report recommendations 2.25 and 2.27.

⁹¹ 2014 Report p169 – 172.

- men hold 80% of partnerships or principal positions in private law firms, and it is those partnerships that decide if women should advance to greater seniority and partnership in the firm;
- unconscious bias – that is, where bias against women is not a conscious decision – can have an equally deleterious effect on the advancement of women as conscious bias. One example was that private firms tend to be more inclined to send their male lawyers to socialise with clients as a result of a perception that clients would prefer that.

The 2014 Report identified information and awareness as key elements in addressing these problems. The Report recommends that employers should:

- conduct annual pay equity audits to ensure there are no disparities based on gender;⁹²
- ensure performance reviews and promotions are based on outcomes and efficiency, as opposed to billable hours, and are not limited for those on flexible work arrangements;⁹³
- require those involved in determining decisions about employee performance and pay to undertake unconscious bias training.⁹⁴

Career Support

One of the emerging themes identified in the 2014 Report was the importance of mentoring and career support for lawyers at all stages of their careers.⁹⁵ I have already mentioned the recommendation that the WA Bar Association establish a formal mentoring programme. The Report also recommends that all employers have a formal mentoring scheme for their junior employees, and in

⁹² 2014 Report recommendation 2.34(a).

⁹³ 2014 Report recommendation 2.34(b) and (c).

⁹⁴ 2014 Report recommendation 2.34(d).

⁹⁵ 2014 Report p172 – 173.

the case of small firms where that would be impractical, the Report recommends that the Law Society should establish a mentoring scheme to link employees in small firms to mentors in other firms.⁹⁶ The Report recognises that both men and women have an important role to play in encouraging and mentoring junior women lawyers.⁹⁷

Culture of the Profession

The final theme which emerged during the consultations on Chapter 2 that should be mentioned is the changed culture of the profession today as compared with its culture in 1994. The change in culture is manifested in two ways. First, the consultations identified an expectation that lawyers will be available at any and all times of the day and night, 7 days a week. This expectation can have adverse implications for the mental health, family commitments and general well-being of all practitioners.⁹⁸

How to effect a change in these expectations – which amounts to a major cultural shift – is an issue on which much more work is required to be done. The 2014 Report recommended the first step: that the Law Society should lead the profession in a dialogue to identify practical steps which can be taken to move away from a 24/7 mentality and from its focus on time billing, to develop a plan for action, and then to prepare progress reports on the implementation of that action plan, with a view to achieving real change within 5 years.⁹⁹

The second cultural change within the profession which was identified in the consultations for the 2014 Report was that an increasing number of men and women are leaving the profession in the early stages of their legal careers. This

⁹⁶ 2014 Report recommendation 2.35.

⁹⁷ 2014 Report p180.

⁹⁸ 2014 Report p174.

⁹⁹ 2014 Report, recommendation 2.37, 2.38.

appears to impact more on women lawyers overall because there are more female than male graduates.¹⁰⁰ What is not clear is precisely why this is occurring, again because information is not collected as to why people are leaving the profession. The 2014 Report therefore recommends that the Law Society seek information from those practitioners who do not renew their practising certificates, identified by gender and post-admission experience, to ascertain their reasons for not continuing in the profession.¹⁰¹

5. Implementation of the recommendations in the 2014 Report: Challenges and Opportunities

In this section of the paper I want to discuss some of the possible challenges and the opportunities which are presented by the recommendations in the 2014 Report.

The slow progress, or lack of progress, in implementing some of the recommendations in the 1994 Report suggests that there might also be some resistance to implementing some of the recommendations in the 2014 Report. Possible reasons for that resistance which immediately spring to mind are expense, disagreement and a perception that these are ‘women’s problems’. I should say that I do not seek to mention some of these possible reasons for resisting change in order to give them legitimacy, but rather to dispel any basis on which they might be used as an excuse for inaction.

In so far as there might be a perception that implementing the recommendations from the 2014 Report will be too expensive, two things can be said. First, many of the recommendations in the 2014 Report will involve no, or minimal, expense, to government, employers or individuals. Secondly, even where

¹⁰⁰ 2014 Report p174.

¹⁰¹ 2014 Report, recommendation 2.39.

implementation of the recommendations would have some financial consequences, the benefits of implementation are likely to be far reaching and ultimately productive of savings elsewhere.

It is also possible that there might be disagreement about some of the recommendations made in the 2014 Report. It would be a little surprising to see disagreement about the existence of gender bias as discussed in the 2014 Report but it is possible that there will be different views about the way in which that gender bias should be addressed. As the 2014 Report itself discloses, strongly held competing views were expressed in the course of the consultations and in the course of the drafting of the 2014 Report. An ongoing and constructive dialogue about how best to tackle incidents of gender bias in the law and in the administration of justice is not necessarily a bad thing, unless it becomes an excuse for inaction. However, the fact is that the recommendations in the 2014 Report have been reached after very extensive consultations with government, the profession, and stakeholders in relation to each area. In these circumstances, if there is disagreement about whether to implement any of the recommendations in the 2014 Report, the question will be: what compelling reason is there for not doing so?

The final ‘challenge’ I want to mention potentially lies in the view that issues of gender bias are ‘women’s problems’, which women need to resolve themselves. Nothing could be further from the truth. Addressing gender bias in the law, as well as in our society more generally, is not simply a feminist issue, or a women’s issue. In the context of our law, in its practice and in its administration, gender inequality is not a women’s issue, it is a justice issue. The elimination of gender bias is a responsibility we all share – government, the judiciary, the profession, professional bodies, and men and women alike.

Earlier this year the United Nations launched a campaign for gender equality called 'Heforshe' which recognises this point, and which encourages men to speak out about the inequality that faces women and girls around the world. And an important part of the work recently done by Elizabeth Broderick, Australia's Sex Discrimination Commissioner, in relation to gender equality has been to secure the support of men in working to eliminate gender inequality through the Male Champions of Change programme. Given that men continue to occupy many key decision making roles in our society and in the legal profession, eliminating gender inequality in the law and in its administration in this State requires the support and commitment of men as well as of women.

Let me turn, finally, to mention two of the opportunities which are presented by the 2014 Report. The first is that the 2014 Report presents the opportunity for immediate action. The recommendations in the 2014 Report are very practical in nature – they set out what needs to be done and by when. Sometimes the difficulty in tackling a problem is knowing where to start. The extensive recommendations in the 2014 Report means that no such difficulty can exist in relation to tackling gender bias in the law and its administration.

The second opportunity presented by the 2014 Report is that it presents a renewed challenge to all of us, women and men, to take up the recommendations in the 2014 Report, and to consciously and conscientiously eliminate gender bias wherever it may exist in the law and in the administration of justice in this State.

Each of the 197 recommendations in the 2014 Report constitutes a positive step which can and should be taken to eliminate gender bias. The 2014 Report

presents a significant opportunity to achieve real and positive change in the law and in its administration.