

**The New South Wales Bar Association
Submission to the Productivity Commission
Childcare and Early Childhood Learning Draft Report**

Introduction

1. On 22 November 2013 the federal Treasurer, the Honourable Joseph Hockey, requested that the Productivity Commission undertake an inquiry into Child Care and early Childhood Learning on behalf of the Australian Government.
2. The objective of the Australian Government in establishing the inquiry is to examine and identify future options for child care and early childhood learning that:
 - a. support workforce participation, particularly for women;
 - b. address children's learning and development needs, including the transition to schooling;
 - c. are more flexible to suit the needs of families, including families with non-standard work hours, disadvantaged children, and regional families; and
 - d. are based on appropriate and fiscally sustainable funding arrangements that better support flexible, affordable and accessible quality child care and early childhood learning.
3. This submission addresses the particular workforce participation, affordability and accessibility issues that arise for male and female barristers who have young children.
4. Part 1 of this submission provides an overview of the nature of practice at the New South Wales bar, including the comparative workforce participation and attrition rates of male and female barristers, and a summary of the key results of a child care survey of its members conducted by the Association in early 2014.
5. Part 2 of this submission addresses those parts of the Commission's Draft Report that raise issues that the Association may usefully comment upon.

PART 1

The New South Wales Bar Association

6. The New South Wales Bar Association is a voluntary association of practising barristers and the peak representative body of New South Wales barristers. As at September 2014 there are 2,256 barristers holding current practising certificates in New South Wales, of whom 469 are women.¹ Of the total number of barristers holding a current practising certificate in New South Wales, 2,241 are members of the Association.
7. As at September 2014 1,006 of the 2,256 barristers who hold a current practising certificate are under 50 years of age.² Of the 2,256 barristers who hold a current practising certificate, 903 have been practising at the bar for 10 years or less.
8. The objects of the Association are to:
 - a. promote the administration of justice;
 - b. promote, maintain and improve the interests and standards of Local Practising barristers;
 - c. make recommendations with respect to legislation and law reform; and
 - d. seek to ensure that the benefits of the administration of justice are reasonably and equally available to all members of the community.
9. The Association regularly provides both the judicial and executive branches of government with advice in respect to bills and legislative amendment. A considerable number of barristers are appointed as members of court liaison committees, government working parties and statutory authorities, providing their skills and expertise for the public benefit, often without fee.
10. Most if not all, members of the Association will over the course of their careers repeatedly provide *pro bono publico* (without fee and in the public interest) advice and advocacy for members of our community who cannot afford legal advice or representation but whose circumstances raise legal issues in the public interest. Each of the federal and state courts and tribunals operating within New South Wales regularly request *pro bono* assistance from and refer to members of the Association for *pro bono* assistance litigants whose cases raise legal issues in the public interest. The Association, through its members, meets the considerable administrative costs associated with judicial referrals.

¹ <http://www.nswbar.asn.au/the-bar-association/statistics>. As at 3 September 2014.

² <http://www.nswbar.asn.au/the-bar-association/statistics>. As at 3 September 2014.

11. The Association's members, and the bar generally, have a critically important role in the administration of justice, including access to justice. The burden of such judicial referrals on the Association's members and barristers generally has markedly increased in recent years.

Practice as a barrister in New South Wales

12. Barristers at the private bar in New South Wales are compelled by legislation and the Barristers' Rules to work in a particular and unique way. Barristers at the private bar in New South Wales are self-employed, sole practitioners running their own businesses.
13. Barristers at the private bar in New South Wales are not permitted to be employees nor are they permitted to employ another legal practitioner. They are not permitted to form any business association or partnership. Nor are barristers permitted to incorporate. Each barrister is solely responsible for his or her own work and for meeting the considerable costs of running his or her own practice.
14. Most barristers at the private bar in New South Wales are members of and work from chambers for the purpose of professional collegiality, to share knowledge, resources and support staff, and to minimise the considerable financial overheads of operating otherwise as a sole practitioner.
15. Most barristers' chambers consist of one or more floors of a building, usually co-located to the courts in which the members of the chambers principally practice. Courts are located in the Sydney CBD and urban and regional centres. Each barristers' chambers employs support staff, usually a clerk, junior clerk and receptionist. The running costs of the barristers' chambers, including the salary or wages of the chamber's employees, are shared among the member barristers. Most barristers' chambers consist of 20-30 barristers.
16. Those barristers who do not practise at the private bar in New South Wales are employed by the Office of the Director of Public Prosecutions, the Office of the Public Defender, or the Office of the Commonwealth Director of Public Prosecutions.

Barristers' hours and child care responsibilities

17. Barristers work long hours, often well outside the hours 8.00am to 6.00pm.
18. Barristers' working hours are dependent upon court sitting times and the time sensitivities and pressures of litigation. Court sitting times are increasingly being extended to accommodate the increasing workload in all courts in New South Wales.

19. Barrister's working hours are unusual in that unlike most professions, their work commitments can fluctuate from week to week. If a barrister is involved in a hearing, they could typically work for more than 12 hours a day. Alternatively if they are not involved in hearings, barristers can have an extremely high degree of flexibility, including working from home or taking time from work.
20. These aspects of practice at the bar in New South Wales present particular challenges in respect to child care arrangements. However, practice at the private bar in New South Wales also affords a level of flexibility which, if appropriately managed, may permit barristers who have young children to accommodate the care of their children around court and other professional commitments.
21. There is no doubt that the nature of practice at the bar raises issues of accessibility and affordability of child care services for those barristers, male and female, who have young children.
22. The availability, affordability and flexibility of quality childcare is therefore of critical importance to those barristers who have young children. Access to affordable, quality childcare will dictate whether a barrister can continue to maintain a practice at the private bar, whether full-time, part-time or at all.
23. As at August 2014, the median age of barristers, both male and female, in their first five years of practice at the bar is between 30-40 years of age. According to the Australian Bureau of Statistics figures published in 2012, the average age of women in Australia at the time of birth of their first child in 2010 was 28.9. The median age of men in Australia at the time of birth of their first child in 2010 ranged from 29.9 to 34 depending upon whether they were unmarried or married. The ABS identified time spent obtaining professional qualifications and financial stability as factors relevant to the increase in average and median ages at the birth of the first child.³ There is a high degree of likelihood that if a barrister chooses to have a child, raising young children will coincide with the barrister's early years at the bar.
24. A recent survey of members revealed that 86.19% of barristers surveyed considered that the availability of child care places was a problem for members of the Association. Of those members who have existing child care arrangements, 47.27% of barristers relied on family members to care for their children, compared with 41.82% of barristers who used long day care. About a third of barristers (33.64%) used the services of a nanny on a part-time basis and only 9.09% of barristers used the services of a nanny on a full-time basis.

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<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30March+Quarter+2012#CHILDBEARING>. As at 3 September 2014.

25. It is fair to say that the costs of a full-time nanny are prohibitive for most barristers but that a nanny is an attractive, flexible alternative to the present inflexibilities of long day care. Either a shared nanny (57.76% of barristers surveyed) or a part-time nanny (50.00% of barristers surveyed) were the most preferred alternatives to long day care. Significantly, however, 24.14% of barristers surveyed still considered a full-time nanny to be a preferred alternative to long day care.
26. As to long day care, 65.58% of barristers surveyed indicated that priority access to a city-based long day care centre would affect the barrister's capacity to continue or improve in their career at the bar. Of the barristers surveyed, 88.74% considered extended hours at a long day care centre to be important.
27. While city-based long day care was identified as an important factor in the capacity of a barrister to maintain a practice the out-of-pocket expenses of city-based long day care is also a factor in work force participation.
28. The bar, as is reflected in the wider community, has experienced an increase in the number of members who have 'working families' i.e., partnered families where both parents work and single parent families where the single parent works. As these numbers increase, the type of childcare that is utilised by members of the bar as a whole falls within the median range described in the Productivity Commission's Draft Report on Child Care and Early Learning (the 'Draft Report').
29. However the childcare needs of the bar as a whole are quite different to the childcare needs of women barristers. Women barristers, unlike their male counterparts, are more likely to be a part of a 'working family'. This has consequences for the type of care that is likely to be utilised. While the Draft Report notes that 20% of 0-2 year olds are cared for solely by their parents, with one parent being able to work part-time, part-time work is simply not an option that is available to barristers in the same way. For example, courts and clients are unlikely to be able to accommodate a barrister working only particular hours on particular days each week, meaning that barristers' needs for occasional or emergency care are likely to be greater than for other part-time workers. This is so even though women barristers are more likely to utilise some form of formal care for their 0-2 year old children when compared to their male counterparts or the general population.
30. Similarly women barristers are also less likely to utilise occasional care facilities or preschools that are not attached to long day care facilities. Women barristers are also more likely to require the stable care provided by long day care centres given the variable nature of a barrister's workload.

31. As can be seen, while the bar as a whole broadly reflects the statistics presented in the Draft Report, women barristers present a more complex picture. Women barristers can be characterised as high users of child care, requiring child care at an earlier stage and for longer hours than their male counterparts and indeed the population as a whole.

Workforce participation

32. Generally the women at the bar are a highly motivated professional group. They are all tertiary qualified, ambitious and hard-working with a wide range of personal and professional experiences.
33. The bar experiences a high attrition rate amongst its members. However a critical concern for the bar Association is the much higher rate of attrition for women barristers. Anecdotally, women are far more likely than men to leave practice at the bar for reasons of family responsibility, including the affordability and accessibility of appropriate, quality child care.

34. Statistics compiled in 2013 demonstrate that the attrition rates for women barristers who came to the bar in New South Wales through the Bar Practice Course (a compulsory course for barristers) each year is significantly higher than it is for men, as shown in the following table:

Year	Percentage of the total number of males who undertook the Bar Practice Course who have since left the bar (as at August 2013)	Percentage of the total number of females who undertook the Bar Practice Course who have since left the bar (as at August 2013)
1998	37.5% (24 out of 64)	33.3% (9 out of 27)
1999	35% (25 out of 71)	62.5% (15 out of 24)
2000	24% (17 out of 71)	50% (9 out of 18)
2001	16% (7 out of 24)	25% (6 out of 24)
2002	17.6% (9 out of 51)	31.25% (5 out of 16)
2003	24.6% (14 out of 57)	27.8% (5 out of 18)
2004	25% (22 out of 88)	33.3% (7 out of 21)
2005	17% (10 out of 58)	28% (9 out of 32)
2006	14.8% (9 out of 61)	27.3% (9 out of 33)
2007	3.9% (2 out of 51)	16% (5 out of 31)
2008	5.6% (2 out of 36)	29% (7 out of 24)
2009	5.8% (3 out of 52)	5.3% (1 out of 19)
2010	5.5% (3 out of 55)	14.3% (4 out of 28)
2011	7.4% (4 out of 54)	18% (6 out of 33)
2012	0% (0 out of 47)	0% (0 out of 23)
2013	0% (0 out of 62)	3.03% (1 out of 33)

35. In the years 2004 to 2013 the percentage of women barristers increased from 14.27% to 20.07% of all barristers at the New South Wales bar. However, the high attrition rate for women continues to be reflected in the low number of women taking silk (Senior Counsel) at the New South Wales bar. In the years 2004 to 2013 the percentage of women silk at the New South Wales bar increased from 4% to 10.9% of all silk. There has not been a significant increase in the number of women at the New South Wales bar, despite the percentage intake of women increasing from 19.3% to 33% of new barristers over the years 2004 to 2013.
36. The Draft Report suggested that around 58% of employed mothers with a child under the age of 15 works part-time. However unlike the general population part-time work is not available to women barristers in the same way as it is for other professionals. The pressure caused by the lack of quality affordable childcare is compounded for many women by the hours of work required to maintain a practice at the bar.
37. Anecdotally, it is not uncommon for members of the bar to report 1-2 year waiting periods for a place in a child care centre per child. It is not uncommon for barristers to have in place different daily child care arrangements over the course of the working week. It is also not uncommon for those child care arrangements to vary as between children in the one family, it being difficult to arrange two or more places in the same child care centre for children from the same family.
38. The logistical difficulties that different daily child care arrangements present is compounded by the fact that practice at the bar is extremely variable. Ideally, there is a need for continuity and stability in childcare arrangements in order to compensate for the wildly variable workload of barristers. However, there is also a need for occasional or emergency care when something unexpected arises in a barrister's practice which cannot be accommodated by existing childcare arrangements. As access to occasional or emergency care is limited, it is not uncommon for barristers to be unable to accept briefs on the basis that they are unable either to accommodate the increase to their workload or a brief that will need urgent attention.
39. In part, the need for alternative child care arrangements throughout the working week is a function of the inflexible hours of child care centres (usually 8.00am to 6.00pm). But the need for alternative child care arrangements also arises where there are limited positions available at a child care centre over the course of a week meaning that children may need to be cared for by a nanny, family member or through some other home based care arrangement. The availability of occasional or emergency care is an issue for barristers when the usual arrangement is not workable, for example, where the nanny is unwell or the child is unwell and unable (or not allowed) to attend centre-based day care.

40. The use of nannies not only raises issues about the quality of the care provided to children (nannies may or may not be registered and have appropriate qualifications and training) it also raises issues in relation to employment terms and conditions and taxation revenue. Informal home based care arrangements may lend themselves to the loss of superannuation payments to the care provider and loss of revenue to the government through income taxation. A significant factor contributing to this is the current lack of any subsidy to offset the costs of home based care arrangements.
41. Conservatively, the annual out-of-pocket expense of long day care centres after taking into account the government child care rebate capped at \$7,500 is \$26,100 per child, after tax. This estimate is based upon a daily rate of \$140, five days a week for 48 weeks of the year. In comparison the annual cost of a nanny or other home based care could be as much as \$57,000 (based on a rate of \$25 per hour, 8 hours per day, five days per week for 48 weeks of the year).
42. The cost of nannies raises issues of affordability, particularly for junior members of the bar who are in the early years of establishing a professional practice. Presently, the only government financial contribution to the cost of nannies is the Child Care Benefit. Generally barristers and their families are ineligible for the child care benefit as they exceed the income threshold. The experience of the bar, and no doubt also for other professionals, such as nurses or doctors, who work long, non-standard hours (i.e., non-9.00am to 5.00pm hours), is that nannies can provide the flexibility and hours of child care needed but are prohibitively expensive.
43. For these reasons the availability and affordability of long day care, together with consideration of tax-deductibility and greater funding for in-home care by qualified nannies, is of critical importance to retaining barristers in private practice in New South Wales, particularly women barristers.
44. The costs of child care, centre based or home based, are not tax-deductible yet those costs are directly referable to the income-producing activities of parents who need to make child care arrangements in order to work. Other costs associated with child care, such as upfront fees, reservation fees, late fees and payment of fees even for those days a child is unable to attend centre based child care due to illness, directly affect the affordability of child care and the capacity of barristers to maintain a practice at the bar.
45. As a result of the long-term experiences of its members and concerned at the high attrition rates among women barristers in particular, the Association has very recently entered into an arrangement with a commercial child care centre provider, Guardian Early Learning, whereby the Association has secured 10 full time places at a child care centre in the Sydney CBD. Places at the centre are available to members of the Association and employees of barristers' chambers. Based on the current waitlist, the Association will have exceeded the number of reserved places

by 26% by February 2015, which supports its members' concerns in relation to the availability of quality, affordable child care in the Sydney CBD. So far as the Association is aware, this initiative is unique among the services offered by any other professional associations to its members.⁴

12 Funding options

46. Affordable, accessible child care is critical to increased workforce participation of both male and female working parents.
47. Increased workforce participation significantly benefits national productivity in both the short-term and the long-term boosting gross domestic product by maintaining a skilled workforce, preserving public investment in the higher education of males and females, by reducing dependency on welfare, including welfare in retirement, and increasing taxation revenue.
48. Consistent workforce participation over a lifetime is linked to long-term financial independence in retirement of all Australians, including all working parents, but especially women.
49. The Association considers it important to provide access to and funding for child care places to facilitate and support working parents across all income levels.
50. The loss to national productivity of parents being unable to access affordable, appropriate child care includes the loss of investment in education and training of those parents who must leave the work force to care for their children, and the loss of tax revenue to the government as a result of parents leaving the work force, including the loss of tax revenue from parents who make a significant net financial contribution to public revenue. These aspects of loss of productivity give rise to systemic problems when parents who have left a highly skilled work force such as the law to care for children try to return to that work force. There is a medium-term net loss to public revenue while parents re-establish their careers.
51. It is important for national productivity that adults of working age, with or without children, participate in the work force, accrue superannuation and pay taxes to contribute to public revenue for as much of their working lives as possible. Public funding for child care is an important systemic component of ensuring that adults of working age with children participate in the work force, accrue superannuation and contribute to public revenue. Part of the analysis of the 'affordability' of child care funding from a public policy standpoint must therefore take into consideration the increased income tax revenue both from parents participating in the workforce and from the increased employment opportunities available in the child care and associated sectors of an expanded child care system. An increase in income tax revenue would also mean an increase in retirement

⁴ http://www.nswbar.asn.au/docs/mediareleasedocs/MR_Childcare_04082014.pdf

savings through superannuation for parents and those employed in the child care sector. Increase in retirement savings is another significant long-term public policy benefit and part of the broader issue of the sustainability of the national system of public welfare.

52. A variety of funding models have been used by all levels of government to offset or contribute to the costs of child care. The Association considers a combination of funding arrangements to be the most equitable and effective in ensuring the availability and affordability of child care services for all sectors of the Australian community.
53. The Association supports:
 - a. direct public funding of approved centre based care and approved home based care (including qualified, registered nannies);
 - b. government rebates in respect to each eligible child for up to a prescribed number of hours per week at a prescribed rate;
 - c. availability of the rebate in respect to approved centre based care and approved home based care (including qualified, registered nannies);
 - d. capping of rates that may be charged by approved centre based and home based care providers; and
 - e. tax deductibility of out-of-pocket child care costs.

Direct public funding – (a)

54. Direct public funding of centre based care permits a systemic approach to the provision of child care and allows government to target key geographical areas where the need for child care centres is highest. The Association's child care survey has revealed the importance of child care in the Sydney CBD for most of the Association's members. The Association, however, appreciates that barristers located outside Sydney, in Parramatta, Newcastle or other regional locations, also have child care needs which might best be met by co-locating child care centres to the courts in those locations.

Government rebates – (b), (c), (d)

55. Government rebates in respect to each child for up to a prescribed number of hours per week at a prescribed rate would allow parents who need out-of-hours care for their children to employ a qualified, registered nanny. This form of care is particularly important for shift workers such as nurses, but also for professionals, such as barristers, who work long hours, often dictated by the exigencies of court sitting hours and the unpredictability of litigation. The experience of the Association's members suggests that the prescribed number of hours per week would need to be in the vicinity of 50 hours per week, or 100 hours per fortnight as proposed by the Commission.

56. The Association also considers that as an appropriate condition of public funding the rates charged by the child care sector should be regulated and a schedule of rates (or a range of rates) imposed. That schedule of rates may allow a scale depending upon the particular costs of providing centre based care in a particular location (e.g., the Sydney CBD) and on a sliding scale referable to the age of the children in respect to whom the rates apply. Ultimately, rates should be capped and periodically reviewed.
57. The experience of the Association's members is that child care rates in the city or the suburbs are comparable, with a standard daily rate of \$140 being charged for care of children 0-12 months of age irrespective the geographical location of the centre.
58. A legitimate concern is that approved service providers not be able to increase their rates correlative to any increased public subsidy or revenue concession, such as tax deductibility. By capping rates approved service providers would be prevented from increasing their rates as the public subsidy increases. The child care sector should be operated for the public benefit. Regulating the rates charged by the child care sector will help contain costs while also maintaining competition in the sector.

Tax deductibility of out-of-pocket child care costs – (e)

59. The Association notes that the Commission proposes to subject the Early Childhood and Learning Subsidy (ECLS) to both an activity and a means test.
60. Any proposal to means test the ECLS has the effect of giving more in dollar terms to low and middle income families than higher income families.
61. There is no proposal to provide comparable, relevant assistance to higher income families notwithstanding those families make a significant net financial contribution to the public purse.
62. The Association does not agree that out-of-pocket child care expenses should not be tax deductible as a matter of principle. The Association considers tax deductibility to be a part of a broader child care funding arrangement which calls for a combination of paid subsidy and tax deductibility to provide appropriate, targeted, gender-neutral assistance to working parents of all income levels.
63. A paid subsidy is of assistance to lower and lower-middle income families, whereas tax deductibility assists upper-middle and higher income families.
64. The Association is concerned that a paid subsidy without tax deductibility for out-of-pocket expenses creates disincentives to lower and lower-middle income parents seeking more remunerative or more highly skilled employment if there is little or

no net gain to them in terms of income. Those disincentives are detrimental in the longer term reducing the superannuation savings of lower and lower-middle income parents and increasing the call on the public welfare in retirement. Equally, a paid subsidy without tax deductibility that meets substantially less than a quarter of the total out-of-pocket child care expenses imposes disproportionate work-related expenses on higher-middle and higher income parents and creates disincentives to those parents working full-time or at all in highly skilled, highly remunerative work. The loss of highly skilled workers from the workforce has a negative impact on national productivity, retirement savings and net public revenue.

65. Assume a government subsidy for a higher income family capped at \$7,500 and no tax deductibility.

Centre based care

66. The annual cost of one child in child care in an approved centre based care arrangement in Sydney, five days a week for 48 weeks of the year can range from between \$24,000 to \$33,600 (\$100 – \$140 per day) without any government subsidy. The annual cost to working parents of approved centre based care is therefore up to \$33,600 in post-income tax dollars per child. Assume an effective tax rate of 30%, and the real annual cost of child care is up to \$43,680 in pre-tax dollars per child.

Home based care

67. The annual cost of one child in child care in a home based arrangement (private nanny) in Sydney can range from \$50,000 to \$80,000 dollars. The cost to working parents of a nanny is therefore up to \$80,000 in post-income tax dollars. Again, assume an effective tax rate of 30% and the real annual cost of child care is up to \$104,000 in pre-tax dollars.
68. The Association does not consider it appropriate to regard either of these considerable out-of-pocket child care costs to be solely private or domestic costs given that these costs are incurred in income-producing activities.
69. Targeting higher-middle and high-income earners builds into public policy disincentives to productivity. The more you earn, the less net income you receive and the more you pay in tax. Given the high net costs of child care, and that those costs are incurred in income-producing activities, there is merit in principle in the tax deductibility of child care costs.
70. Being self-employed barristers are not paid superannuation but must make their own arrangements with respect to superannuation. This usually takes the form of voluntary superannuation payments. High out-of pocket child care costs mean that

voluntary superannuation payments are often neglected by self-employed persons, including barristers. There is public benefit in making child care more affordable for working parents across all income levels in the short, medium and long-term to ensure that working parents maintain retirement savings.

71. The Association does not agree that the touchstone for the tax deductibility of out-of-pocket child care costs is whether it would 'pay for itself' in terms of increased tax revenue and reduction in welfare payments (p.510, Draft Report).
72. First, the assumption appears to be that the value of any tax deduction would need to be offset ('pay for itself') by net public revenue in the same financial year. This ignores the particular contribution of increased consistent workforce participation by highly skilled workers to national productivity and regional and global competitiveness.
73. Second, the assumption fails to take into account the significant net financial contribution to public revenue made by middle and high income working parents over the course of their working lives.
74. Third, the assumption fails to take into account the immeasurable benefit to early childhood education of incentivising greater workforce participation and increasing access for all children, regardless of parent income, to early childhood education.
75. Fourth, there is no correlative suggestion in the Draft Report that the payment of means tested subsidies will necessarily result in broader increased workforce participation and increase national productivity. Indeed, the Draft Report notes that workforce participation is not increased in circumstances where out-of-pocket expenses are a disincentive (p.503):

[O]ut-of-pocket childcare expenses can be a major impediment to workforce participation as most people are reluctant to work for a low net wage, even if they recognise the effect of their choices on their future income.
76. Fifth, any tax deduction represents a public policy choice between competing choices. For example, a 'work uniform' such as a barrister's robes is a tax deduction but a suit is not. Whether or not a barrister wears robes to court, the barrister will invariably wear a suit under their robes. The suit is as much a 'work uniform' as the robes, but as a matter of taxation policy only one and not the other is tax deductible.
77. Consideration needs to be given to creating incentives for working parents to increase their net income (and superannuation savings) rather than building disincentives into the system for working parents to work more hours, or seek more highly skilled or more remunerative work. A combination of paid subsidy and tax deductibility will achieve this.

78. The Association is concerned that the Draft Report focuses upon the tax deductibility of child care costs as against the female parent's income (Box 12.1, p.510, Draft Report).
79. First, child care costs should not be seen as a cost referable to the income of a female parent.
80. Second, there is a failure to recognise that women on average earn close to 20% less than their male counterparts, meaning women will continue to retire with less superannuation savings than their male counterparts but with longer life expectancy.
81. Third, to disregard arguments such as those advanced by the Tax Institute that tax deductibility 'would encourage highly educated women ... to return to work' is to ignore matters such as attrition rates of women in highly skilled professions such as the law for reasons of family responsibility.
82. Fourth, the attrition rates of women in highly skilled professions such as the law for reasons of family responsibility constitute an alarming and ongoing systemic loss to national productivity. For some time, women have been graduating from university in greater numbers and with higher academic qualifications than men. It is critical to national productivity that this valuable resource is not squandered.
83. The Association supports the tax-deductibility of out-of-pocket child care costs as against the assessable incomes of working parents, as appropriate. Tax-deductibility should be linked to actual workforce participation and not to other assessable income-producing activities such as investment income. The formulation of policy in relation to tax-deductibility will need to take into account the circumstances of single-parent families, as well as two-parent families where both parents are in the workforce. It may be appropriate to impose a cap on the tax-deductibility of out-of-pocket child care costs taking into account the number of children in respect to whom those costs are incurred. As a matter of public policy out-of-pocket child care expenses should be tax-deductible only to the extent that the child care expense is incurred so as to permit one or both parents (as the case may be) to participate in the workforce.
84. The relationship between income-producing workforce participation and the costs of child care warrant implementation of some level of tax-deductibility of child care costs as part of the system of funding child care costs.

13 Potential impacts of proposed changes

85. The Draft Report acknowledges Australia has a relatively low rate of workforce participation among women of child-bearing years compared to most other OECD countries (p.588, Draft Report).
86. The Association's statistics demonstrate a significantly higher attrition rate among female barristers than male barristers due to family responsibilities. The Association considers, however, that family responsibilities will impact future attrition rates for both male and female barristers, as social norms change and child care and other domestic responsibilities are increasingly shared between parents of both genders. Accordingly, the Association expects that the out-of-pocket costs of child care will detrimentally affect the capacity of male and female barristers to maintain a practice at the bar. Assuming the anticipated change in social norms among barristers is not unique to barristers, it is fair to assume that child care and other domestic responsibilities will be shared between parents of both genders across the national workforce.
87. For these reasons, it is imperative that tax deductibility be part of a broader child care funding arrangement which calls for a combination of paid subsidy and tax deductibility to provide appropriate, targeted, gender-neutral assistance to working parents of all income levels.
88. The Association considers that implementation of some level of tax-deductibility of child care costs as part of the system of funding child care costs will ensure increased work force participation for working parents of both genders regardless of income. Tax-deductibility creates significant incentives to self-funding at all income levels above the tax-free threshold. The combination of paid subsidy and tax deductibility is therefore best calibrated to meet the different needs of working parents across all income levels to the broader benefit of national productivity in the longer-term.
89. Given the annual pre-tax costs for centre based child care (\$33,600) and home based child care (\$104,000), it is clear that the costs of child care are a significant financial impost on even higher-middle and higher income working parents. If the costs of child care were met or offset through a combination of paid subsidy and tax concessions, that would create incentives for working parents of all income levels to stay in the work force, and to seek more highly skilled and remunerative work. The value of any short-term tax concessions claimed may well be modest in public revenue terms but there will be significant long-term systemic incentives that flow from ensuring that working parents are not overburdened or 'punished' for working more hours or in more remunerative work by disproportionate child care costs. Indeed, parents will be encouraged to work more hours in more highly skilled and more remunerative work to the benefit of national productivity.

90. Given concerns about future workforce shortages and the costs of an ageing population it is imperative that all adults of working age participate in the workforce. Assuming cumulative future workforce shortages, it is imperative that all adults of working age participate in the workforce and accrue personal superannuation sufficient to provide a personal income stream in retirement.
91. Any analysis of the 'affordability' of child care funding and workforce participation must therefore consider the long-term, intergenerational effect on national productivity, including the extent to which the child care funding system we establish now will create appropriate incentives for future generations of working parents to work to meet their own superannuation needs.